(16,656.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 155.

MAY HAYS, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

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1 UNITED STATES OF AMERICA, } ss:
Territory of New Mexico, }

Be it remembered that heretofore, to wit, on the 17th day of February, A. D. 1893, there was filed in the office of the clerk of the court of private land claims, at the city of Santa Fé, in the Territory of New Mexico, a petition; which said petition is in the words and figures following, to wit:

2 UNITED STATES OF AMERICA:

In the Court of Private Land Claims, Sitting in the Territory of New Mexico, at the City of Santa Fé.

MAY HAYS
vs.
UNITED STATES OF AMERICA.

To the honorable chief justice and associate justices of said court:

May Hays, a resident of the county of San Miguel and a citizen of the United States of America and of the Territory of New Mexico, as complainant, brings this his petition against the United States of America, as defendant, and thereupon states and shows to this court the following:

I. That previous to the second day of July, A. D. 1842, Manuel Armijo, governor of the Territory of New Mexico under the Mexican government, in accordance with a petition granted to Venturo Trujillo a certain tract of land situated in the then "demarcation" of San Miguel del Bado, now the county of San Miguel, Territory of New Mexico, at the place known as "Apache Springs" (Ojo del Apacha), and issued a decree directing the constitutional alcalde to place said Venturo Trujillo in possession of the lands granted, which said decree he signed as governor of the Territory; and the constitutional alcalde, to whom was referred the matter of putting the petitioner in possession of the said lands, some time afterwards made his return that he had placed the petitioner, Venturo Trujillo, in possession of the said lands in obedience to said decree and order, and that the original papers and the return of the said alcalde were duly deposited in the archives of New Mexico.

II. Your petitioner further shows that he has not in his possession or under his control either the original or a copy of said petition, order, and decree of the said governor and the return of said constitutional alcalde, and the same are not in the possession of the surveyor general of New Mexico; that the archives of New Mexico were kept previous to the occupation of the Territory by the United States and for some time thereafter very carelessly, and many of the papers and documents therein were lost and destroyed, the above among the number, and your petitioner prays that he may give secondary evidence of said petition, order, and decree of the said governor and the return of said constitutional alcalde.

III. That the petition of said Venturo Trujillo and the
3 grant, order, and decree by the governor of New Mexico can be proved by the testimony of Guadalupe Miranda, secretary of the Territory of New Mexico under the Mexican government from the ninth day of April, 1839, until the last day of October, 1843, during the time that Manuel Armijo was governor of the Territory of New Mexico under the Mexican government, and by the testimony of Rafael Aragon, who was secretary of Demasio Salazar, the constitutional alcalde who placed Venturo Trujillo in possession of the grant; that both said Guadalupe Miranda and Rafael Arafon are dead, and your petitioner begs leave to file herewith, marked "A," a copy of their testimony taken in case numbered 72, which is now on file in the office of the surveyor general of the Territory of New Mexico, and makes the same a part of this petition, and prays that the same may be used in the trial of this case.

IV. That on the second day of July, A. D. 1842, Demasio Salazar, a justice of the peace in the second demarcation of San Miguel del Bado (now embraced within the limits of the county of San Miguel, Territory of New Mexico), acting in conformity with the laws and customs of Mexico, placed Venturo Trujillo in possession of the lands at the place called Apache Springs (Ojito del Apache), situated in what is now the county of San Miguel, Territory of New Mexico, bounded and described as follows, to wit: "On the north the mesa, on the south the old road to Los Chupaines, on the east the Mesa de los Chupaines, and on the west the hills bordering on the Cañon Cito de la Lagunita." The original certificate of juridical possession made by the constitutional alcalde and which was given to said Venturo Trujillo is now on file in the office of the surveyor general of the Territory of New Mexico and is made a part of this petition, and a copy thereof and a translation into English, marked "B," is filed herewith and is made a part of this petition. A duplicate copy of said certificate was returned by the alcalde with the original granting decree and has been lost with it.

V. That said Venturo Trujillo entered into possession of said tract of land so granted, and occupied the same from about July, 1842, for about four years; that after him and claiming through him, his heirs and assigns, the property was occupied by Juan Lucero, Jesus Casados, John L. Taylor, and by your petitioner, May Hays, who, by virtue of sundry and divers mesne conveyances, now claims the ownership of the whole of said tract of land, and that ever since the year 1842 and at the present time the said grantee, Venturo Trujillo, and his legal representatives and those claiming under him and them have held, claimed, used and occupied, owned, and grazed upon peaceably and notoriously the whole of said land.

Copies of said mesne conveyances and translations of such as
4 are in Spanish, marked "C," are filed herewith and are made part of this petition.

VI. That a survey of said tract of land has never been made, but that the boundaries of said piece of land are well known and are established landmarks and are now claimed as the boundaries of said land. A sketch map of said tract of land, marked "D," is filed

herewith and is made a part of this petition. Your petitioner cannot state how much land is embraced within the limits of said grant, but his best information is that it does not exceed eleven leagues, and he therefore avers that it is not over eleven leagues.

VII. That in the year —— John L. Taylor, the then owner of said Apache Springs grant, made application to the surveyor general of the Territory of New Mexico for the approval of said grant of land, reported as No. 72, which application was rejected on December 19th, 1872, by the said surveyor general of the Territory of New Mexico on the ground that a justice of the peace had no authority under the laws of the Mexican government to make a grant of land; that on September 22nd, 1873, application was made to the surveyor general of the Territory of New Mexico to reopen the said application for confirmation, to receive new testimony which had been discovered in said cause. Said application is now on file in the office of the surveyor general of the Territory of New Mexico, and a copy thereof, marked "E," is filed herewith and is made a part of this petition; that the surveyor general allowed such new testimony to be introduced, as shown by Exhibit "F," hereto attached, which is a copy of the original now on file in the office of the surveyor general of the Territory of New Mexico, and which copy is made a part of this petition, and that the testimony so taken was that of Rafael Aragon, secretary of Damasio Salazar, constitutional alcalde, who placed Venturo Trujillo in possession of said land, and Guadalupe Miranda, secretary of New Mexico during the administration of Manuel Armijo, governor of New Mexico under the government of Mexico. The testimony of both was that the governor had made a valid grant and one good under the law, and that the constitutional alcalde had acted under it when he put said Ventura Trujillo in possession of the tract of land aforesaid. The original of this testimony is now on file in the office of the surveyor general of the Territory of New Mexico, and a copy thereof, marked "A," is filed herewith and is made a part of this petition.

VIII. That Rafael Aragon and Guadalupe Miranda are both dead, and your petitioner knows of no other person or persons by whom the facts sworn to by them can be proved, and he prays this court that he may introduce the evidence in this cause already sworn to by them, and a copy of which, marked "A," is hereto attached and made a part of this petition.

IX. That your petitioner knows of no one who makes adverse claim to your petitioner for said lands; that since July, A. D. 1842, the said grant has always been claimed, occupied, and held by the said Venturo Trujillo, his heirs, grantees, and assigns, and those claiming under them, as an individual grant made by the Government of Mexico, and has been so generally recognized.

X. That the original documents by the governor of New Mexico, creating the grant, are not now known to exist, and therefore no such documents are filed herewith. Your petitioner refers, however, to the papers now on file, in claim No. 72, in the office of the surveyor general of the Territory of New Mexico, and prays for per-

mission to use the same as if they or copies thereof had been filed with this petition.

XI. That there are no gold or silver mines or lodes or minerals within the limits of said grant to the knowledge of your petitioner, and he therefore alleges that there are none, but if any there are, petitioner alleges that the same pertain to him in full proprietorship by virtue of the said grant.

Your petitioner therefore claims, in consideration of the premises, that under and by virtue of the laws and customs in force in New Mexico, at the time of the acquisition of this Territory by the Government of the United States of America, he is entitled as the legal representative of the original grantee, Venturo Trujillo, to the land within the original boundaries as above set forth; and as the same has been held, possessed, and claimed by yout petitioner and his grantors, *and* he prays that the said grant may be enquired into and its validity established by decree of this honorable court, and that by said decree the same may be confirmed and set apart to your petitioner as the legal representative of the original grantee, and for such other and further relief as may seem meet and proper in the premises and as equity and justice may require.

May it please your honors to grant unto your petitioner the proper process to bring the said defendant, The United States of America, into court, in accordance with the law and practice of this honorable court.

5*a* And your petitioner, as in duty bound, will ever pray, etc.

CATRON & CROSS,
Att'ys for Claimant.
W. J. MILLS,
Att'y for Claimant.

THOMAS B. CATRON,
Of Santa Fé, and
WILLIAM J. MILLS,
Of Las Vegas, N. M.,
Solicitors for Petitioner.

6 And be it further remembered that thereafter, to wit, on the day and year last aforesaid, there was filed in the said office of said clerk a map; which said map is as follows, to wit:

(Here follows map, marked page 7.)

8 And be it further remembered that, to wit, on the 23d day of March, 1893, a summons was issued by the clerk of said court; which said summons, with all endorsements thereon, is as follows, to wit:

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED

9 *Summons.*

UNITED STATES OF AMERICA, *District of New Mexico,* } ss:

In the U. S. Court of Private Land Claims.

MAY HAYS, Plaintiff, *versus* THE UNITED STATES OF AMERICA, Defendant. } Petition Filed in the Clerk's Office this 17th Day of February, A. D. 1897.

The President of the United States of America to Matt. G. Reynolds, Esq., attorney for the United States, before the court of private land claims, Greeting:

You and each of you are hereby notified that an action has been brought in said court by May Hays, plaintiff, against you, as defendant, under the provisions of the act of the Congress of the United States, entitled "An act to establish a court of private land claims and to provide for the settlement of private land claims in certain States and Territories," approved March 3, 1891, and that a copy of the petition of said plaintiff is herewith attached and served upon you, and that you are required to appear and plead, demur, or answer to the petition filed in said action in said court within thirty days from the date of service of this summons upon you, and if you fail so to do, the said plaintiff will take default according to the provisions of the aforesaid act.

Witness the Honorable Joseph R. Reed, chief justice of the court of private land claims, and the seal of the said court, at the city of Santa Fé, in said district, this 23d day of March, A. D. 1893, and of the Independence of the United States the 116th year.

JAMES H. REEDER, *Clerk,*
By IRENEO L. CHAVES,
Deputy Clerk.

9½ [Endorsed:] Oje del Apache grant. Gen. No., 101; F. No., 3. U. S. court of private land claims, district of New Mexico. May Hays, plaintiff, *versus* The United States of America, defendant. Summons. Filed this 21st day of April, A. D. 1893. James H. Reeder, clerk, by Ireneo L. Chaves, deputy clerk. —— ——, of attorney for plaintiff.

Proof of Service.

UNITED STATES OF AMERICA, *District of New Mexico,* } ss:

APRIL 1, A. D. 1893.

I hereby certify that I received the within writ on the — day of April, A. D. 1893, and that I have personally served the same upon the said defendant, U. S., by delivering to —— —— and each of

them personally a true copy of the within writ at the time and place as follows: As to —— ——, at ——, county of ——, on the — day of ——, A. D. 189–. As to —— ——.

Served on me this 29th day of March, 1893.

MATT. G. REYNOLDS,
U. S. Attorney.

This writ, therefore, returned by me, as the law directs, this 21st day of April, A. D. 1893.

TRINIDAD ROMERO, *Marshal*,
By SERAPIO ROMERO,
Deputy Marshal.

Marshal's Fees.

Service — defendants, at $2..... ..... $
Mileage — miles at 6c. going only... ....
1 summons..... 4.00

Total..... $

Paid by —— ——.

10 And be it further remembered that thereafter, to wit, on the 21st day of March, 1895, Plaintiff's Exhibit "C," chain of title, was filed in the office of the clerk; which said exhibit is in the words and figures following, to wit:

11 In the United States Court of Private Land Claims.

MAY HAYS
vs.
THE UNITED STATES. } No. 101. The Ojo del Apache Tract.

Chain of Title.

Bentura Trujillo, original grantee, July 2, 1842.

Juan Nepomuceno Lopez, attorney for widow and heirs of original grantee, to Juan Lucero. } September 21, 1855.

Conveys the whole tract.
Consideration not given.

Juan B. Lucero to John L. Taylor and Henry D. Gorham. } March 24, 1866.

Consideration, $300.00.
Conveys the whole tract.

Andrea Trujillo and Juan Catarino Romero, her husband; Francisco Trujillo and Jacinta Vigil, his wife; Maria Apolinaria Romero, Maria Serafina Garcia, wife of Donaciano Trujillo; Isidro Lopez and Tomaso Tabares, his wife; Juan Lopez and Gregaria Romero, his wife, and Donaciano Trujillo, husband of Serafina Garcia,
to
Louis Sulzbacher. } September 24, 1874.

Convey half their interest in the tract acquired by virtue of inheritance as the direct or indirect heirs of Bentura Trujillo, deceased, and Maria Getrudis Gonzales, deceased, wife of said Trujillo.
Consideration, $1.00 and professional services.

12 Lázaro Sandoval and Margarita Baca, his wife, and Guadalupe Trujillo and Francisco Lopez
to
Louis Sulzbacher. } November 2, 1874.

Convey all their interest in the tract acquired by virtue of inheritance as the direct or indirect heirs of the original grantee.
Consideration, $1.00 and professional services.

Juan Catarino Romero and Antonia Trujillo, his wife, and Francisco Trujillo and Jacinta Vigil, his wife,
to
Louis Sulzbacher. } November 3, 1874.

Convey all their interest in the tract acquired by inheritance, etc., as above.
Consideration, $400.00.

Donaciano Trujillo and Serafina Garcia, his wife, and Apolinaris Romero
to
Louis Sulzbacher. } November 3, 1874.

Convey all their interest in the tract acquired as above.
Consideration, $200.00.

Guadalupe Trujillo
to
Louis Sulzbacher. } November 6, 1874.

Conveys all his interest in the tract acquired by virtue of inheritance, etc.
Consideration, $200.00.

Lázaro Sandoval and Margarita Baca, his wife, to Louis Sulzbacher. } November 6, 1874.

Convey all their interest, etc.
Consideration, live stock and professional services.

13 Isidro Lopez and Tomasa Tabares, his wife, to José Lino Rivera. } November 24, 1874.

Convey one undivided ninth part of the tract, acquired as above.
Consideration, $10.00.

José L. Rivera and Rita Lopez de Rivera, his wife, to May Hays. } November 24, 1874.

Convey interest described in next preceding deed.
Consideration, $20.00.

John L. Taylor, adm'or of estate of Henry D. Gorham, to May Hays. } July 22, 1869. Sale by order of probate court.

Conveys one undivided half of the tract.
Consideration, $250.00.

Louis Sulzbacher and Pauline, his wife, to May Hays, } December 10, 1874.

Convey all their interest in the tract.
Consideration, $2,750.00.

John L. Taylor and Mary E., his wife, to May Hays. } April 23, 1877.

Convey all their interest in the tract.
Consideration, $5,000.00. This conveyance includes other property.

14 And be it further remembered that thereafter, to wit, on the 16th day of April, 1895, an answer was filed in the office of the clerk; which said answer is in the words and figures following, to wit:

15 UNITED STATES OF AMERICA, *ss:*

In the Court of Private Land Claims, Santa Fé District, May Term, 1895.

MAY HAYS, Plaintiff,
vs.
UNITED STATES, Defendant. } No. 101.

Answer.

Now comes The United States, by its attorney, Matt. G. Reynolds, and for answer to the petition filed in the above-entitled cause says:

That for aught it knows to the contrary the matters and things in said petition alleged may be true, but having no knowledge or information sufficient to enable it to form a belief as to whether they are true and not confessing any of them to be true in the manner and form as the same are in said petition set forth and alleged, it asks that plaintiff be put to the proof of all the allegations therein contained, as provided he shall be by the act of Congress approved March 3, 1891, under which this court assumes jurisdiction of this controversy, and that he shall be put to the proof as to his pretended interest in said alleged grant.

Now, having fully answered, it prays the court that a decree may be entered rejecting the claim for said alleged grant and dismissing the petition, and for such other orders as to the court may seem meet and proper and which it may be authorized to make in the premises.

MATT. G. REYNOLDS,
U. S. Attorney.

16 And be it further remembered that thereafter, to wit, on the 25th day of August, 1896, a motion to make parties defendant was filed in the office of the clerk; which said motion is in the words and figures following, to wit:

17 In the U. S. Court of Private Land Claims, Santa Fé, N. M., August Term, 1896.

MAY HAYS, Plaintiff,
vs.
UNITED STATES, Defendant. } No. 101. Ojo del Apache G't.

AUGUST 25TH, 1896.

Now comes the defendant, The United States, in the above-entitled cause and moves the court for an order requiring the plaintiff in said cause to make parties defendant adverse possessors and claimants of real estate included within the grant claimed by said plaintiff in the above-entitled cause, said adverse possessors and claimants being the following:

Antonio Solano, Pablo Lucero, Antonio Lucero, Bonifacio Lucero, Francisco Lopez, Andres Lucero, Casimiro Trambley, Domingo

Hays, Hubert Hilgert, Cruz Hays, John C. Adlon, Emma Adlon, Charles F. Adlon, William L. Adlon, William F. Prentiss, Thos. W. Haywood, Geo. Wilkinson, John L. Chapman.

All of said adverse possessors and claimants having made entries and acquired rights under the lands laws of the United States, as evidenced by the public record in the office of the register and receiver of the U. S. district land office at Santa Fé, N. M.

Defendant further prays an order of court requiring said plaintiff to serve each of said adverse claimants and possessors with citation and a copy of their petition, as required by law.

MATT. G. REYNOLDS, *U. S. Att'y.*

18 And afterwards, to wit, at a stated term of the court of private land claims begun and held at Santa Fé, on the 10th day of August and on the 16th day of said term, the same being the 27th day of August, 1896, the following, among other, proceedings were had, to wit:

MAY HAYS, Plaintiff,
vs.
UNITED STATES, Defendant. } No. 101.

This cause coming on to be heard, on the motion of the defendant for an order requiring the plaintiff in the above-entitled cause to make parties defendant adverse possessors and claimants of real estate included within the grant claimed by said plaintiffs in the above-entitled cause, said adverse possessors and claimants being the following: Antonio Solano, Pablo Lucero, Antonio Lucero, Bonifacio Lucero, Francisco Lopez, Andres Lucero, Casimiro Trambley, Domingo Hays, Herbert Hilgers, Cruz Hays, John C. Adlon, Emma Adlon, Charles F. Adlon, William J. Adlon, William F. Prentis, Thos. W. Hayward, Geo. W. Wilkinson, John L. Chapman, and for a further order requiring that said adverse possessors or claimants be summoned and served, as provided by law, and

19 said motion having — argued and submitted and the court being sufficiently advised in the premises, it is ordered by the court that said plaintiff, May Hays, be, and he is hereby, ordered and required to amend his petition in said cause so as to particularly state the name or names of any persons in possession or claiming said grant or any part thereof otherwise than by lease or permission of the petitioners. It is further ordered by the court that said plaintiff serve all such adverse claimants and possessors above mentioned with a copy of his petition and with citations, as provided by law. It is further ordered by the court that the further hearing of this cause stand adjourned and continued until said plaintiffs shall have complied with the terms of the order.

20 And be it further remembered that thereafter, to wit, on the first day of September, 1896, an amended petition was filed in the office of the clerk; which said amended petition is in the words and figures following, to wit:

21 UNITED STATES OF AMERICA:

In the Court of Private Land Claims, Sitting in the Territory of New Mexico, at the City of Santa Fé.

MAY HAYS
vs.
THE UNITED STATES OF AMERICA ET AL.

To the honorable chief justice and associate justices of said court:

May Hays, a resident of the county of San Miguel and a citizen of the United States of America and of the Territory of New Mexico, as complainant, brings this his petition against the United States of America and Antonio Salano, Pablo Lucero, Antonio Lucero, Bonafacio Lucero, Francisco Lopez, Andres Lucero, Casimero Trambley, Domingo Hays, Hubert Hilgers, Cruz Hays, John C. Adlon, Emma Adlon, Charles F. Adalon, William L. Adlon, William F. Prentiss, Thos. W. Hayward, Geo. W. Wilkinson, and John L. Chapman, as defendants, and thereupon states and shows to this court the following:

I. That previous to the second day of July, A. D. 1842, Manuel Armijo, governor of the Territory of New Mexico, under the Mexican government, in accordance with a petition granted to Venturo Trujillo a certain tract of land situated in the then "demarcation" of San Miguel del Bada, now the county of San Miguel, Territory of New Mexico, at the place known as the "Apache Springs" (Ojo del Apache), and issued a decree directing the constitutional alcalde to place said Venturo Trujillo in possession of the lands granted, which said decree he signed as governor of the Territory; and the constitutional alcalde, to whom was referred the matter of putting the petitioner in possession of the said lands, some time afterwards made his return that he had placed the petitioner, Venturo Trujillo, in possession of the said lands in obedience to said decree and order, and that the original papers and the return of the said alcalde were duly deposited in the archives of New Mexico.

II. Your petitioner further shows that he has not in possession or under his control either the original or a copy of said petition, order, and decree of the said governor and the return of the said constitutional alcalde, and the same are not in the possession of the surveyor general of New Mexico; that the archives of New Mexico were kept previous to the occupation of the Territory by the United States and for some time thereafter very carelessly, and many of the papers and documents therein were lost and destroyed, the above among the number; and your petitioner prays that he may give secondary evidence of said petition, order, and decree of the said governor and the return of said constitutional alcalde.

III. That the petition of said Venturo Trujillo and the grant, order, and decree by the governor of New Mexico can be proved by the testimony of Guadalpue Miranda, secretary of the Territory of New Mexico, under the Mexican government, from the ninth day of April, 1839, until the last day of October, 1843, during the time that Manuel Armijo was governor of the Territory of New Mexico

under the Mexican government, and by the testimony of Rafael Aragon, who was secretary of Damasio Salazar, the constitutional alcalde, who placed Venturo Trujillo in possession of the grant; that both said Guadalupe Miranda and Rafael Aragon are dead, and you- petitioner begs leave to file herewith, marked "A," a copy of the testimony taeken in case number 72, which is now on file in the office of the surveyor general of the Territory of New Mexico, and prays that the same may be used in the trial of this case.

IV. That on the second day of July, A. D. 1842, Damasio Salazar, a justice of the peace in the second demarcation of San Miguel del Bado (now embraced within the limits of the county of San Miguel, Territory of New Mexico), acting in conformity with the laws and customs of Mexico, placed Venturo Trujillo in possession of the lands of the place called Apache Springs (Ojo del Apache), situated in what is now the county of San Miguel, Territory of New Mexico, bounded and described as follows, to wit: On the north, the mesa; on the south, the old road to Los Chupaines; on the east, the Mesa de los Chupaines, and on the west, the hills bordering on the Cañoncito de la Laguuita. The original certificate of juridical possession made by the constitutional alcalde, and which was given to said Venturo Trujillo, is now on file in the office of the surveyor general of the Territory of New Mexico, and is made a part of this petition, and a copy thereof and translation into English, marked "B," is filed herewith and made a part of this petition. A
22 duplicate copy of the said certificate was returned by the alcalde with the original granting decree, and has been lost with it.

V. That said Venturo Trujillo entered into possession of said tract of land so granted and occupied the same from about July, 1842, for about four years; that after him and claiming through him, his heirs and assigns, the property was occupied by Juan Lucero, Jesus Casados, John L. Taylor, and your petitioner, May Hays, who, by virtue of sundry and divers *mense* conveyances, now claims the ownership of the whole of said tract of land, and that ever since the year 1842 and at the present time the said grantee, Venturo Trujillo, and his legal representatives and those claiming under him and them have held, claimed, used and occupied, owned and grazed upon, peac-ably and notoriously, the whole of said land. Copies of said *mense* conveyances and translations of such as are in Spanish, marked "C," are filed herewith and are made part of this petition.

That a survey of said tract of land has never been made, but that the boundaries of said piece of land are well known and are established landmarks, and are now claimed as the boundaries of said land. A sketch map of said tract of land, marked "D," is filed herewith and is made a part of this petition. Your petitioner cannot state how much land is embraced within the limits of said grant, but his information is that it does not exceed eleven leagues, and therefore avers that it is not eleven leagues.

VII. That in the year — John L. Taylor, the then owner of said Apache Springs grant, made application to the surveyor general of

the Territory of New Mexico for the approval of said grant of land, reported as No. 72, which application was rejected on December 19th, 1872, by the surveyor general of the Territory of New Mexico on the ground that a justice of the peace had not authority under the laws of the Mexican government to make a grant of land. A copy of said rejection, marked "E," is filed herewith and is made a part of this petition; that on September 22nd, 1873, application was made to the surveyor general of New Mexico to reopen the said application for confirmation to receive new testimony which had been discovered in said cause. Said application is now on file in the office of the surveyor general of the Territory of New Mexico, and a copy thereof, marked "E," is filed herewith and is made a part of this petition; that the surveyor general allowed such new testimony to be introduced, as shown by Exhibit "G," hereto attached, which is a copy of the original now on file in the office of the surveyor general of the Territory of New Mexico, and which copy is made a part of this petition; that the testimony as taken was that of Rafael Aragon, secretary of Demasio Salazar, constitutional alcalde, who placed Venturo Trujillo in possession of said land, and Guadalupe Miranda, secretary of New Mexico during the administration of Manuel Armijo, a governor of New Mexico under the government of Mexico. The testimony of both was that the governor had made a valid grant and one good under the law, and that the constitutional alcalde had acted under it when he put the said Venturo Trujillo in possession of the tract of land aforesaid. The original of this testimony is now on file in the office of the surveyor general of the Territory of New Mexico, and a copy thereof, marked "A," is filed herewith and is made a part of this petition.

VIII. That Rafael Aragon and Guadalupe Miranda are both dead, and your petitioner knows of no other person or persons by whom the facts sworn to by them can be proved, and he prays this court that he may introduce the evidence in this cause already sworn to by them, and a copy of which, marked "A," is hereto attached and made a part of this petition; and your petitioner is informed and believes that the said defendants, to wit, Antonio Salano, Pablo Lucero, Antonio Lucero, Bonafacio Lucero, Francisco Lopez, Andres Lucero, Casimero Trambley, Domingo Hays, Hubert Hilgers, Cruz Hays, John C. Adlon, Emma Adlon, Charles F. Adalon, William L. Adlon, William F. Prentiss, Thomas W. Hayword, George W. Wilkinson, and John L. Chapman, make some pretended claim of title in and to certain pieces and parcels of land within the said grant of land so owned, as aforesaid, by your petitioners and within the boundaries thereof, adverse and hostile *of* your petitioner therein, under certain alleged entries and patents issued by virtue of the laws of the United States, and your petitioner prays that the said parties may be made parties defendant to this petition, in accordance with the statute and the practice of this court, and that their right and title, if any there be, to such lands within the aforesaid grant of your petitioner be adjudicated and determined by this court, together with the value of said
23 lands so held by said defendants adversely to your petitioner, and that if the titles of the said defendants hereinbefore men-

tioned be sustained and held valid by this court, and thereupon excepted from any decree of confirmation which may be rendered in favor of your petitioner to the lands of said grant, there be adjudged and awarded to your petitioner the reasonable and fair amount and value of the said lands so excepted and withheld from your petitioner, and that judgment therefor in favor of your petitioner be rendered as against the defendant, The United States, together with his costs in this behalf, in accordance with the provision of the statute in such case.

That your petitioner knows of no one else who makes adverse claim to your petitioner for the said land; that since July, A. D. 1842, the said grant has always been claimed, occupied, and held by the said Venturo Trujillo, his heirs, grantees, and assigns, and those claiming under them, as an individual grant by the government of Mexico, and has been generally recognized.

X. That the original documents by the governor of New Mexico creating the grant are not now known to exist, and therefore no such documents are filed herewith. Your petitioner refers, however, to the papers now on file in claim No. 72, in the office of the surveyor general of the Territory of New Mexico, and prays for permission to use the same as if they or copies thereof had been filed with this petition.

XI. That there are no gold or silver mines or lodes or minerals within the limits of said grant to the knowledge of your petitioner, and he therefore alleges that there are none, and if there are plaintiff alleges that the same pertain to him in full proprietorship by virtue of the said grant.

Your petitioner therefore claims, in consideration of the premises, that under and by virtue of the laws and customs in force in New Mexico at the time of the acquisition of this territory by the Government of the United States of America he is entitled, as the legal representative of the original grantee, Venturo Trujillo, to the land within the original boundaries as above set forth and as the same has been held, possessed, and claimed by your petitioner and his grantees, and he prays that the said grant may be enquired into and its validity established by decree of this honorable court, and that by said decree the same may be conferred and set apart to your petitioner as the legal representative of the original grantee, and for such other and further relief as may seem meet and proper in the premises and as equity and justice may require.

May it please your honors to grant unto your petitioner the proper process to bring the said defendants, The United States and the above-named defendants, into court in accordance with the law and practice of this honorable court.

And your petitioner, as in duty bound, will ever pray, etc.

CATRON, SPIESS & GORTNER,
Santa Fé, New Mexico,
W. J. MILLS, *New Haven, Conn.,*
Sol'rs for Petitioner.

24 And be it further remembered that on the first day of September, 1896, three summons- were issued by the clerk of said court; which said summons-, with all endorsements thereon, are as follows, to wit:

25 TERRITORY OF NEW MEXICO, }
County of San Miguel. }

Montgomery Bell, first being duly sworn, upon oath says that he is a qualified elector of the Territory of New Mexico; that he served the within citation and summons on Antonio Solano on September 26th, 1896, at Dry Springs, near Apache Springs; on Pablo Lucero, on said date, at Lagunita; on Antonio Lucero on September 25th, 1896, at Las Vegas; on Bonificio Lucero, on said date, at said last-mentioned place; on Francisco Lopes, on said last-mentioned date, at Chupuderas; on Andres Lucer-, at said time and place; on Casimiro Trambley, on said day, at Rivera station; on Domingo Hays, on said date, at Apache Springs; on Cruz Hays, on said date, at said Apache Springs; on John C. Adlon on September 24th, at Las Vegas; on William L. Adlon, also at said date and place; on William T. Prentiss, by delivering the same to his agent, L. C. Fortu, as Las Vegas, on September 24th, 1896, who accepted service on behalf of said Prentiss; on Thos. W. Hayward on September 24th, at Las Vegas; on John L. Chapman, on said date at said place; on Emma Adlon, on said date at said place, and on Charles F. Adlon, on said date at said place, all being in the county of San Miguel, Territory of New Mexico; that he made said service on all except said Prentiss, by delivering to them, and each of them, a true copy of said summons, together with a true copy of the amended petition filed in said cause, attached thereto.

Affiant further on oath says that he made diligent search for George W. Wilkinson, but was unable to find him or any one who has succeeded to his rights in the premises; that it is understood he has gone to California and has abandoned his said claim.

MONTGOMERY BELL.

Subscribed and sworn to before me this 9th day of November, 1896.

MAX NORDHAUS,
Notary Public.

[SEAL.]

26 Form No. 167.

U. S. Court of Private Land Claims.

Summons.

In the United States Court of Private Land Claims.

UNITED STATES OF AMERICA, *District of New Mexico,* } *ss:*

MAY HAYS, Plaintiff, *versus* UNITED STATES ET AL., Defendant-. } Amended Petition. Filed in the Clerk's Office this 1st Day of September, A. D. 1896.

The President of the United States of America to Antonio Solano, Pablo Lucero, Antonio Lucero, Bonifacio Lucero, Francisco Lopez, Andres Lucero, Casimiro Trambley, Domingo Hays, Cruz Hays, John C. Adlon, William L. Adlon, William T. Prentiss, Thomas W. Hayward, John R. Chapman, Emma Adlon, Charles F. Adlon and Geo. W. Wilkinson, Greeting:

You and each of you are hereby notified that an action has been brought in said court by May Hays, plaintiff, against you, as defendants, under the provisions of the act of the Congress of the United States entitled "An act to establish a court of private land claims and to provide for the settlement of private land claims in certain States and Territories," approved March 3, 1891, and that a copy of the petition of said plaintiff is herewith attached and served upon you, and that you are required to appear and plead, demur or answer to the petition filed in said action, in said court, within thirty days from the date of service of this summons upon you; and if you fail so to do, the said plaintiff will take default according to the provisions of the aforesaid act.

Witness the Honorable Joseph R. Reed, chief justice of the court of private land claims, and the seal of the said court, at the city of Santa Fé, in said district, this 1st day of September, A. D. 1896 and of the Independence of the United States the — year.

(Signed) JAMES H REEDER, *Clerk,*
[SEAL.] By IRENEO L. CHAVES,
Deputy Clerk.

[Endorsed:] Gen. No., 101–24. U. S. court of private land claims district of New Mexico. May Hays, plaintiff, *versus* United States *et al.*, defendant-. Summons and proof of service. Filed this 12th day of Nov. *12*, A. D. 1896. James H. Reeder, clerk, by Ireneo L. Chaves, deputy clerk. —— ——, of attorney- for plaintiff.

27 TERRITORY OF NEW MEXICO, *County of San Miguel.* }

M. Brunswick, being first duly sworn, on oath says that he is a qualified elector of the Territory of New Mexico; that he served

the citation of this court directed to Robert Hilgers, being the citation hereto attached, together with a copy of the amended petition of May Hays in this cause, upon Elizabeth Cockran, who has acquired the title and claim of Robert Hilgers in the premises by purchase, by delivering to said Elizabeth Cockran a true copy of said citation and amended petition at the county of San Miguel aforesaid, on September 26th; 1896.

M. BRUNSWICK.

Subscribed and sworn to before me this 9th day of November, 1896.

[Seal Max Nordhaus, Notary Public, San Miguel Co., Ter. of New Mex.]

MAX NORDHAUS,
Notary Public.

28 Form No. 167.

U. S. Court of Private Land Claims.

Summons.

In the U. S. Court of Private Land Claims.

UNITED STATES OF AMERICA, *District of New Mexico,* } ss:

MAY HAYS, Plaintiff, *versus* UNITED STATES ET AL., Defendant. } Amended Petition. Filed in the Clerk's Office this 1st Day of Sept., A. D. 1896.

The President of the United States of America to Elizabeth Cockran, grantee of Robert Hilgers, Greeting:

You and each of you are hereby notified that an action has been brought in said court by May Hays, plaintiff, against you, as defendant, under the provisions of the act of the Congress of the United States entitled "An act to establish a court of private land claims and to provide for the settlement of private land claims in certain States and Territories," approved March 3, 1891, and that a copy of the petition of said plaintiff is herewith attached and served upon you, and that you are required to appear and plead, demur, or answer to the petition filed in said action in said court within thirty days from the date of service of this summons upon you; and if you fail so to do, the said plaintiff will take default according to the provisions of the aforesaid act.

Witness the Honorable Joseph R. Reed, chief justice of the court of private land claims, and the seal of the said court, at the city of Santa Fé, in said district, this 1st day of Sept., A. D. 1896, and of the Independence of the United States the — year.

[Seal Court of Private Land Claims, Santa Fé, New Mexico.]

JAMES H. REEDER, *Clerk,*
By IRENEO L. CHAVES,
Deputy Clerk.

[Endorsed:] Gen. No., 101–24. U. S. court of private land claims, district of New Mexico. May Hays, plaintiff, *versus* United States *et al.*, defendant-. Summons and proof of service. Filed this 12th day of Nov., A. D. 1896. James H. Reeder, clerk, by Ireneo L. Chaves, deputy clerk. —— ——, of attorney- for plaintiff.

29 TERRITORY OF NEW MEXICO, } *County of San Miguel.* }

M. Brunswick, being first duly sworn, on oath say that he is a qualified elector of the Territory of New Mexico; that he served the citation of this court, directed to Robert Hilgers, being the citation hereto attached, together with a copy of the amended petition of May Hays in this cause, upon Elizabeth Cockran, who has acquired the title and claim of Robert Hilgers in the premises by purchase, by delivering to said Elizabeth Cockran a true copy of said citation and amended petition, at the county of San Miguel aforesaid, on September 26th, 1896.

M. BRUNSWICK.

Subscribed and sworn to before me this 9th day of November, 1896.

MAX NORDHAUS,
[SEAL.] *Notary Public.*

30 Form No. 167.

U. S. Court of Private Land Claims.

Summons.

In the U. S. Court of Private Land Claims.

UNITED STATES OF AMERICA, } *ss:*
District of New Mexico, }

MAY HAYS, Plaintiff, *versus* UNITED STATES ET AL., Defendant. } Amended Petition. Filed in the Clerk's Office this 1st Day of Sept., A. D. 1896.

The President of the United States of America to Elizabeth Cockran, grantee of Robert Hilgers, Greeting:

You and each of you are hereby notified that an action has been brought in said court by May Hays, plaintiff, against you, as defendant, under the provisions of the act of the Congress of the United States, entitled "An act to establish a court of private land claims, and to provide for the settlement of private land claims in certain States and Territories," approved March 3, 1891, and that a copy of the petition of said plaintiff is herewith attached and served upon you, and that you are required to appear and plead, demur, or answer to the petition filed in said action in said court within thirty days from the date of service of this summons upon you, and if you fail so to do the said plaintiff will take default according to the provisions of the aforesaid act.

Witness the Honorable Joseph R. Reed, chief justice of the court of private land claims, and the seal of the said court, at the city of Santa Fé, in said district, this 1st day of Sept., A. D. 1896, and of the Independence of the United States the — year.

(S'g'd) JAMES H. REEDER, *Clerk*,
[SEAL.] By IRENEO L. CHAVES,
Deputy Clerk.

[Endorsed:] Gen. No., 101–24. U. S. court of private land claims, district of New Mexico. May Hays, plaintiff, *versus* United States *et al.*, defendant. Summons and proof of summons. Filed this 12th day of Nov., A. D. 1896. James H. Reeder, clerk, by Ireneo L. Chaves, deputy clerk. —— ——, of attorney- for plaintiff.

31 And be it further remembered that thereafter, to wit, on the 24th day of October, 1896, an answer was filed in the office of the clerk; which said answer is in the words and figures following, to wit:

32 UNITED STATES OF AMERICA:

In the Court of Private Land Claims, Sitting in the Territory of New Mexico, at the City of Santa Fé.

MAY HAYS
vs.
THE UNITED STATES OF AMERICA.

The answer of Emma Adlon, William M. Adlon, Chas. F. Adlon, John C. Adlon, Antonio Solano, and Eliza Bucci (formerly Mrs. Eliza Hilgers), sole heir- of Herbert Hilgers, defendants, to the bill of complaint of May Hays, complainant.

To the honorable chief justice and associated justices of said court:

These defendants, now and at all times hereafter, saving and reserving unto themselves all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said bill contained, for answer thereunto, or to so much and such parts thereof as these defendants are advised it is or are material or necessary for them to make answer unto, answering, say:

These defendants deny that previous to the second day of July, A. D. 1842, Manuel Armijo, governor of the Territory of New Mexico under the Mexican government, in accordance with a petition granted to Venturo Trujilla a certain tract of land situated in the then "demarcation" of San Miguel del Bado, now the county of San Miguel, Territory of New Mexico, at the place known as the "Apache Springs" (Ojo del Apache), nor issued a decree directing the constitutional alcalde to place said Venturo Trujilla in possession of the land granted, nor that to the constitutional alcalde was referred the matter of putting the petitioner in possession of said land, nor that some time afterwards said alcalde made his re-

turn that he had placed the petitioner, Venturo Trujilla, in possession of said land in obedience to said decree and order, nor that the original papers and the return of the said alcalde were duly deposited in the archives of New Mexico.

II. These defendants admit that complainant has not in his possession or under his control either the original or a copy of said petition, order, and decree of the said governor and the return of said constitutional alcalde, and that the same are not in the possession of the surveyor general of New Mexico.

These defendants deny that the archives of New Mexico were kept previous to the occupation of the Territory by the United States and for some time thereafter very carelessly, and that many of the papers and documents therein were lost and destroyed, the above among the number, and the defendants pray that complainant be not permitted to give secondary evidence of said alleged petition, order, and decree of the said governor and the return of the said constitutional alcalde.

III. These defendants deny that the petition of the said Venturo Trujilla and the pretended grant, order, and decree by the governor of New Mexico can be proven by the testimony of Guadalupe Maranda, secretary of the Territory of New Mexico under the Mexican government from the 9th day of April, 1839, until the last day of October, 1843, during the time that Manuel Armijo was governor of the Territory of New Mexico under the Mexican government, nor by the testimony of Rafael Aragon, who was secretary of Demasio
33 Salazar, the constitutional alcalde who was alleged to have placed Venturo Trujillo in possession of the said pretended grant, and the defendants pray that the alleged testimony may not be used in the trial of this cause.

IV. They deny that on the second day of July, A. D. 1842, Damasio Salazar, a justice of the peace in the second demarcation of San Miguel del Bado (now embraced within the limits of the county of San Miguel, Territory of New Mexico), acting in conformity with the laws and customs of Mexico, placed Ventura Trujilla in possession of the lands of the place called Apache Springs (Ojo del Apache), situated in what is now called the county of San Miguel, Territory of New Mexico, bounded and described as follows, to wit: On the north the mesa; on the south the old road to Los Chupaines; on the east the Mesa de los Chupaines, and on the west the hills bordering on the Cañon Cito de la Lagunita.

These defendants neither deny nor admit that a certificate purporting to be a certificate of judicial possession, made by the constitutional alcalde, is now on file in the office of the surveyor general of the Territory of New Mexico, but deny that the original certificate of judicial possession made by the constitutional alcalde was given to said Ventura Trujillo, nor that a duplicate copy of said alleged certificate was returned by the alcalde with the pretended granting decree and has been lost with it.

V. These defendants deny that said Ventura Trujillo entered into possession of said land so alleged to have been granted and occupied the same from about July, 1842, for about four years. They

further deny that after him and claiming through him, his heirs and assigns, the property was occupied by Juan Lucero, Jesus Casados, John L. Taylor, and petitioner, May Hays, who by virtue of sundry and divers mesne conveyances now claims the ownership of the whole of said tract of land. They further deny that ever since the year of 1842 and at the present time the said grantee, Ventura Trujillo, and his legal representatives and those claiming under him and them have held, claimed, sued and occupied, owned and grazed upon peaceably and notoriously the whole of the said land.

VI. These defendants admit that a survey of said tract of land, has never been made, but they deny that the boundaries of said piece of land are well known and are established landmarks and are now claimed as the boundaries of said land. These defendants cannot state how much land is embraced within the limits of said grant, but from their information believe that there is more than eleven leagues within the boundaries above mentioned.

VII. These defendants admit that in the year of "—" John L. Taylor, the then pretended owner of said Apache Springs, made application to the surveyor general of the Territory of New Mexico for the approval of said pretended grant of land, reported as No. 72, which application was rejected on Dec. 19th, 1872, by the said surveyor general of the Territory of New Mexico, but they do not know if such rejection was upon the sole ground that the justice of the peace had not authority under the laws of the Mexican government to make a grant of land, and desire proof that such was the case.

34 These defendants neither deny nor admit that on September 22nd, 1873, application was made to the surveyor general of New Mexico to reopen the said application for confirmation to receive new testimony which had been discovered in said cause, and that said application is now on file in the office of the surveyor general of the Territory of New Mexico; that the surveyor general allowed such new testimony to be introduced; that the testimony as taken was that of Rafael Aragon, secretary of Demasio Salazar, constitutional alcalde, and Guadalupe Muranda, secretary of New Mexico during the administration of Manuel Armijo, governor of New Mexico under the government of Mexico, but these defendants desire proof that such was the case.

VIII. And these defendants, further answering, show that they are the patentees of certain portions of the said alleged grant, and hold patents from the Government of the United States to the respective lands described as follows, to wit:

The said Emma Adlon holding patent issued September 2nd, 1892, for the east half of the northwest quarter and the southwest quarter of the northeast quarter and the northwest quarter of the southeast quarter of section twenty-nine, in township thirteen north, of range seventeen east, of the New Mexico meridian, in New Mexico Territory, containing one hundred and sixty acres.

The said William L. Adlon for the east half of the northeast quarter and the east half of the southeast quarter of section thirty, in township thirteen north, of range seventeen east, of the New Mexico meridian, containing one hundred and sixty acres.

The said Charles F. Adlon for the west half of the northwest quarter and the west half of the southwest quarter of section twenty-nine, in township thirteen north, of range seventeen east, of New Mexico meridian, containing one hundred and sixty acres.

The said John C. Adlon for the north half of the northeast quarter and the southeast quarter of the northeast quarter and the northeast quarter of the southeast quarter of section twenty-nine, in township thirteen north, of range seventeen east, of the New Mexico meridian, containing one hundred and sixty acres.

The said Antonio Solano for the west half of the northeast quarter and the west half of the southeast quarter of section twelve, in township thirteen north, of range sixteen east, of the New Mexico meridian, containing one hundred and sixty acres.

The said Mrs. Eliza Bucci, formerly Eliza Hilgers, sole heir of Herbert Hilgers, deceased, for the southwest quarter of the northeast quarter and the west half of the southeast quarter and the northwest quarter of the northeast quarter of section thirty, in township thirteen north, of range seventeen east, of New Mexico meridian, containing one hundred and sixty acres.

All of the foregoing-described lands lie within the boundaries of the alleged grant set forth in said petition.

These defendants further show that they settled upon, improved, and acquired title to their respective lands under the laws of the Government of the United States without notice either of record or otherwise of said pretended grant set forth in said petition, nor were they interfered with nor their action in obtaining such
35 & 36 title to said land opposed in any manner or protested against by said petitioner, notwithstanding the possession of these various defendants of their respective lands and all other actions by them taken in acquiring title to said lands were open and notorious, and said petitioner permitted these defendants to acquire title to their respective lands without such notice as the said petitioner was in *conscious* bound to give and by law should give these defendants of any adverse claim in said land by him by virtue of said alleged grant.

These defendants show that since making entry on said respective lands under the laws of the Government of the United States many years ago that they or their grantees have been in open and notorious possession of said various land- up to the present date.

And by virtue of said various proceedings and said patent these defendants allege that they have obtained a good and valid title to their respective lands, and pray that this court may so find.

These defendants, further answering, deny that the petitioner is entitled to the relief or any part thereof in the said petition demanded as to their respective lands, and pray the same advantage of this answer as if they had pleaded or demurred to the said petition, and pray to be dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

W. G. KOOGLER,
Attorney for Defendant.

37 And be it further remembered that thereafter, to wit, on the 12th day of November, 1896, an answer was filed in the office of the clerk; which said answer is in the words and figures following, to wit:

38 UNITED STATES OF AMERICA, *ss*:

In the Court of Private Land Claims, Santa Fé District.

MAY HAYS, Plaintiff,
vs.
THE UNITED STATES, Defendant. } No. 101. Ojo del Apache Grant.

Answer.

Now comes the defendant in the above-entitled cause and for answer to the plaintiff's petition shows to the court as follows:

I.

It denies that previous to the second day of July, A. D. 1842, or on any other day, Manuel Armijo, governor of the Territory of New Mexico, granted a petition of Venturo Trujillo for a tract of land known as the Apache Springs, described in plaintiff's petition.

II.

It denies that said Armijo, governor as aforesaid, issued a decree directing the constitutional alcalde to place said Trujillo in possession of the lands so alleged to have been granted, or that said Armijo, governor as aforesaid, signed or entered such a decree.

III.

It denies that said alleged grant was made to said Trujillo by competent authority, but alleges that if any concession was made
39 at all, it was by Demasio Salazar, alcalde, and that said Salazar as alcalde had no authority under the laws then in existence or under any special order directing him so to do, issued by competent authority, to make said grant.

IV.

Defendant further denies that said Trujillo was placed in possession of said lands, but alleges that if he entered upon and took possession thereof he retained possession of the same only for a few days, and thereupon abandoned the same, and that he thereby forfeited and lost all rights in and to said land, even if, as defendant denies, he ever acquired any such rights.

V.

As to all of the other allegations of plaintiff's petition, defendant alleges that it has no information enabling it to form an opinion as to the truth or falsity thereof, and it accordingly denies each and

all of said allegations, and prays that the plaintiff be put to strict proof thereof.

Now, having fully answered, defendant prays the court that a decree may be entered rejecting the claim for said alleged grant and dismissing the petition, and for such other orders as to the court may seem meet and proper and which it may be authorized to make in the premises.

Respectfully submitted.

MATT. G. REYNOLDS,
United States Attorney.

40 And afterwards, to wit, at a stated term of the court of private land claims begun and held at Santa Fé on the 9th day of November and on the 5th day of said term, the same being the 13th day of November, 1896, the following, among other, proceedings were had, to wit:

MAY HAYS
vs.
UNITED STATES. } No. 101. Ojo del Apache Grant.

The above-entitled cause now coming on to be heard, there appeared T. B. Catron, Esq., for the plaintiffs and W. H. Pope, Esq., appearing for the said defendant, The United States. The said parties announcing themselves ready, the trial of the cause was proceeded with on the pleadings presented. Oral and documentary proof was introduced. The arguments were postponed until Monday, the 16th inst.

41 And afterwards, to wit, on the 7th day of said term, the same being November 16th, 1896, the following, among other, proceedings were had, to wit:

MAY HAYS
vs.
UNITED STATES. } No. 101.

The above-entitled cause now coming on to be further heard, all the attorneys in the cause being present, after hearing the argument of the counsel, the same was taken under advisement by the court.

42 On the trial of said cause the following testimony, oral and documentary, was offered and introduced:

43 In the Court of Private Land Claims, Santa Fé, New Mexico, August Term, 1896.

MAY HAYS
vs.
UNITED STATES. } No. 101. Ojo del Apache Grant.

On November 13th, 1896, the above-named cause was called up for trial, and the following proceedings were had therein in open court:

Appearances: Messrs. Catron, Spiess & Gortner, for the plaintiff; Wm. H. Pope, Esq., assistant U. S. attorney, for the Government.

Mr. CATRON: We introduce in evidence a paper which is the act of juridical possession from file 148, reported number 72. (Marked Plaintiff's Exhibit "A.")

Mr. POPE: I admit it was filed in reported number 72. We object to its introduction, first, on the ground that its genuineness has not been established and its custody has not been proven; and, second, it is irrelevant and constitutes no basis of title, and it is not proper to be considered in this case.

Mr. CATRON: We also introduce in evidence the evidence which was taken before one of your honors in this building on August 22nd, 1896, of Pascual Baca, Encarnacio Lopez, Jose Benito Martinez, Francisco Trujillo, and May Hays. Marked Plaintiff's Exhibit "B."

Mr. POPE: In addition to the objection we made at the time of the taking of this evidence, we desire to make the further objection now to the introduction of any evidence tending to show any order made by Governor Armijo or to any report made by Damasio Salazar, or the contents of any written instrument of Governor Armijo affecting this title, on the ground that it is secondary evidence, and on the further ground that it is otherwise incompetent.

Mr. CATRON: We also introduce in evidence the testimony
44 of Rafael Aragon taken before the surveyor in 1872. (Marked Plaintiff's Exhibit "C.")

Mr. POPE: We make the same objection to all this testimony that we made to the last tendered and on the ground that no proper foundation has been laid for secondary evidence.

E. F. SIDEBOTTOM, a witness of lawful age, being produced, sworn, and examined on the part of the plaintiff, testified, upon direct examination by Mr. Catron, as follows:

Q. What is your official position, if any?

A. I am clerk and custodian of the archives in the surveyor general's office of New Mexico.

Q. Have you in your possession the papers in the Ojo del Apache grant—the May Hays claim—reported number 72, file 148, known as the John L. Taylor grant?

A. Yes, sir.

Q. State whether or not there is amongst those papers any original grant paper made by Governor Armijo to Ventura Trujillo.

A. Well, from my knowledge I cannot say; what I know about it is the papers are filed and docketed belonging to the surveyor general's office, and among these files are some Spanish documents.

Q. Is there any other Spanish document than Exhibit "A"?

A. Well, there has been filed two Spanish papers, "A" and "B," according to the docket here.

Q. There are only two, is there?

A. Only two as shown, so far as I know. Yes, sir; these two documents are the only Spanish documents called by *by* the docket.

Q. Then you know of no other papers in the surveyor general's office in reference to this grant in the Spanish language?

A. I do not.

Q. Have you examine all the papers? Were there any other papers, can you state from your knowledge?

A. So far as my knowledge extends, these are the only ones.

Q. If there are any other papers there you do not know it?

A. If there are any others I do not know it; I never made a search.

Q. Will you make a search and see if there is any other papers there with reference to it?

A. Yes, sir.

45 Cross-examination by Mr. POPE:

Q. You never examined them with a view of knowing whether there are any other papers?

A. No, sir.

Q. All the papers filed in the case are marked there?

A. All the papers that are filed in the case are marked on the docket here.

Mr. CATRON:

Q. It is the custom to file the papers in the case to which they belong—in the files of each case?

A. Well, as to that, there has been no new cases since I have had charge of the office, so far as I know. I suppose it is the custom of the office. I understand it was the custom of the office to file all the papers with the reported number of the case relating to any particular grant.

Q. That is, any particular papers are filed with that case belonging to it?

A. Yes, sir.

Q. I wish you would make a search of all the papers so you can testify whether there are any more papers or not in this case.

A. Yes, sir; I will.

The COURT: Take a recess now until two o'clock today.

The COURT: Take a recess now until two o'clock.

The hour of two o'clock having arrived, the further hearing of the above-named cause was resumed.

Mr. CATRON:

Q. Mr. Sidebottom, have you since the court adjourned made any investigation or search for other papers which you have been asked about?

A. I have not had time since adjournment to make any search.

Q. How long will it take you to ascertain that fact?

A. Well, there are something like 1,400 papers to look over.

Q. You looked at the place where these papers ought to be?

A. The Spanish papers in that case?

Q. I stated that I wanted you to look and see if you had in your possession a grant made by Governor Armijo in the year 1842 to

Ventura Trujillo, signed by Governor Armijo and Guadalupe Miranda, as secretary of the Territory, for the Ojo del Apache Springs property. I will ask for a *duces tecum* to the surveyor general.

A. I will state as my opinion that I do not suppose there is any.

Q. I think you do not want to look.

A. No; I am perfectly willing to look, so far as that is concerned.

45*a* The COURT: Mr. Catron, so far as we are concerned, we think you have shown that the paper in question is not in the files of this case. We understand it has been the duty of the surveyor general for the last forty years to get these papers together. We understand that you seek to prove the absence, loss, or destruction of the original grant made by the governor. We think you have laid a foundation for secondary evidence.

Mr. CATRON: Mr. Pope, do you admit that?

Mr. POPE: I have information to admit it at this time; I may before we conclude the case.

Cross-examination by Mr. POPE:

Q. You know of your own knowledge that the uniform practice of the surveyor general's office has been to transfer to the files of each case any papers in that office pertaining to the case, do you?

A. No, sir; I do not know that.

Q. Has it been the practice since you have been in the office?

A. No transferring done since I have been in the office. I know of no archives that have been transferred to the cases since I have been in the office.

Q. There are large numbers of papers—archives—transferred to the cases, have they not?

A. Well, I do not know as to that.

Q. You know there are archives relating to the cases, do you not—cases that have been before the surveyor general and that have not been transferred to the reported cases?

A. No, sir; I cannot say as to that.

Q. You say there are 1,400 archives?

A. I believe 1,384 or 1,385.

Q. They relate to the land cases?

A. To land cases, transfers, and so on.

Q. Quite a number of grant papers among those archives?

A. Quite a number relating to lands; whether specially to grants or not is more than I can say; I am not a Spanish scholar and not competent to judge as to that.

Q. As a general rule, it is understood that the papers belonging to each case are put in a package to be kept separately?

A. Yes, sir.

Q. And that is the purpose of the office in keeping them together?

A. Yes, sir.

Q. In this case you did not find any such grant papers as you have been asked about?

A. No.

Q. You have looked amongst those papers, have you not?
A. Yes, sir.
46 Q. It is not there?
A. Not there that I know of.

Mr. CATRON: I now offer in evidence the testimony of Juan Bautista Lucero, taken on the preliminary examination in this case. (Marked Plaintiff's Exhibit "C.") I will read it to the court.

Also the testimony of Guadalupe Miranda, taken before the surveyor general in 1873. (Marked Plaintiff's Exhibit "C.") I will read it to the court.

Mr. POPE: We admit that he is dead, but I desire to interpose an objection based on the files of the surveyor general's office showing that this testimony had been closed and the case transmitted to Congress for consideration, and that this testimony was subsequently taken and the case reopened, under the statement of the surveyor general that he doubted his authority to do so, he having already transmitted to Congress the report—to the land office his report; and I desire to object to it on the further ground that this testimony is practically an affidavit, as the court will notice on its reading, and the further objection that it was not lawfully taken and received by the surveyor general, not having been taken before him, but having been taken under a commission that he issued to a deputy clerk of some county, and the further objection to it is that no proper foundation has been laid for secondary evidence.

Mr. CATRON: The next paper which we introduce in evidence is a deed dated September 21, 1855, from Juan Nepomuceno Lopez to Juan Lucero. (Marked Plaintiff's Exhibit —.)

The next document we offer in evidence is a deed from Juna B. Lucero to John L. Taylor, dated March 24, 1866. (Marked Plaintiff's Exhibit —.)

The next document we offer in evidence is a deed from Andrea Trujillo and Juan Catarino Romero, her husband; Francisco Trujillo and Jacinta Vigil, his wife; Maria Apolinaria Romero, Maria Sefarina Garcia, wife of Donacio Trujillo; Isidro Lopez and Tomasa Tabares, his wife; Juan Lopez and Gregorai Romero, his wife, and Donaciano Trujillo, husband of Serafina Garcia, to Louis Sulzbacher, dated September 24, 1874.

The next document we offer in evidence is a deed from Lazaro Sandoval and Margarita Baca, his wife, and Guadalupe Trujillo and Francisca Lopez to Louis Sulzbacher, dated November 2, 1874.
47 This is a certified copy of that deed. (Marked Plaintiff's Exhibit 4.)

The next document we offer in evidence is a deed from Juan Catarino Romero and Antonia Trujillo, his wife, and Francisco Trujillo and Jacinta Vigil, his wife, to Louis Sulzbacher, dated November 3, 1874. (Marked Plaintiff's Exhibit 5.)

The next document we offer in evidence is a deed from Donaciano Trujillo and Serafina Garcia, his wife, and Apolinaria Romero to Louis Sulzbacher, dated November 3, 1874. (Marked Plaintiff's Exhibit 6.)

The next document we offer in evidence is a deed from Guadalupe Trujillo to Louis Sulzbacher, dated November 6, 1874. (Marked Plaintiff's Exhibit 7.)

The next document we offer in evidence is a deed from Lazaro Sandoval and Margarita Baca, his wife, to Louis Sulzbacher, dated November 6, 1874. (Marked Plaintiff's Exhibit 8.)

The next document we offer in evidence is a deed from Isidro Lopez and Tomasa Tabares, his wife, to Jose Lino Rivera, dated November 24, 1874. (Marked Plaintiff's Exhibit 9.)

The next document we offer in evidence is a deed from Jose L. Rivera and Rita Lopez de Rivera, his wife, to May Hays, dated November 24, 1874. (Marked Plaintiff's Exhibit 10.)

The next document we offer in evidence is a deed from John L. Taylor, administrator of the estate of Henry D. Gorman, to May Hays, dated July 22, 1869. (Marked Plaintiff's Exhibit 11.)

The next document we offer in evidence is a deed from Louis Sulzbacher and Pauline, his wife, to May Hays, dated December 10, 1874. (Marked Plaintiff's Exhibit 12.)

The next document we offer in evidence is a deed from John L. Taylor and Mary E., his wife, to May Hays, dated April 23, 1877. (Marked Plaintiff's Exhibit 13.)

Mr. POPE: We desire to enter an objection to each and all of these papers on the ground that no proper foundation has been laid and their genuineness has not been established.

Mr. CATRON: Mr. Hays' house was burned down by fire in San Miguel county, and these deeds were destroyed, and I will have to furnish certified copies. That is all the evidence I desire to
48 introduce except the evidence of the justice of the peace of San Miguel del Bado, which I reserve the right to do.

PABLO LUCERO, a witness of lawful age, being produced, sworn, and examined on the part of the Government, testified, upon direct examination by Mr. Pope, as follows:

Q. What is your name?
A. Pablo Lucero.
Q. Where do you live?
A. I live at Chupaderos.
Q. What is your age?
A. I am 63 years old.
Q. How long have you lived at Chupaderos?
A. I have lived there since the year forty.
Q. Do you know a place called the Apache spring?
A. Yes.
Q. How far is that from Chupaderos?
A. About four miles.
Q. How long have you known the Apache spring?
A. I know it since the year forty.
Q. Just state how you have known it—whether or not you were ever at the spring and how many times and all about it.
A. The first time I went there I was passing by; then I went to

the spring to take possession of it, being asked to do so by a man, the late Rafael Salazar.

Q. Between the time you first knew the spring and the time you took possession there were you acquainted with the spring; did you go there at any time?

A. I was not there, except in passing by the spring, before I took possession.

Q. Did you pass by the spring once or more than once or how many times?

A. I remember one or two times before that time.

Q. At that time did you have occasion to herd flocks out there or anything of that character?

Mr. CATRON: We object, as it is suggesting to him what he did.

The COURT: He may ask him if he ever herded out there.

Q. Did you ever herd in the neighborhood of the Apache spring; and, if so, when?

Mr. CATRON: Object to that.

A. No.

Q. I believe you said you were living in Chupaderos in forty?

A. Yes.

49 Q. Did you know Ventura Trujillo?

A. No.

Q. What was the condition of the spring as to your knowledge from the year forty up to the time you took possession; was there any house there?

A. There was no house there.

Q. Was there any land cultivated or broken?

A. No.

Q. Was there any one during that time living at the spring?

A. No.

Q. Have you ever heard of Ventura Trujillo?

A. Yes.

Q. When did you first hear of Ventura Trujillo?

A. About the year fifty-five, when I went to the place to take possession.

Q. Was Ventura Trujillo living there then?

A. No.

Q. Do you know where Ventura Trujillo lived previous to that time?

A. Yes.

Q. Where did he live?

A. In San Miguel.

Q. Did he ever live at the Apache spring?

A. No.

Q. Did you ever see Ventura Trujillo?

A. No; I did not know him.

Q. I believe you said you took possession in 1855?

A. Yes.

Q. Just state how you came to take possession and who were your associates.

A. I went to the Ojo del Apache spring in company with Don Rafael Salazar and other people. I remember only a part of the names of the other people; one of them was Jose Maria Martinez and myself, and Rafael Salazar and Jose Martinez, also Jose Abad and Gabriel Valencia.

Q. Were there any improvements of any character at the spring, any houses, or anything of that kind?

A. No.

Q. Were there any ruins of houses or anything of that character left by people living there?

A. No.

Q. Have you ever seen anything of that kind in passing the spring previous to that time?

A. No.

Q. Now, this property when you and the others settled on it, how was it recognized as to belonging to any one?

Mr. CATRON: We object, as no proper foundation has been laid for this evidence.

A. It was known as public land.

Q. Had you ever heard that Ventura Trujillo had any interest there?

Mr. CATRON: We object, as it is impertinent, irrelevant, improper, and no proper foundation laid for it.

50 A. I did not know it before the time that we went to the place.

Q. Was Juan Bautista Lucero one of those who was with you in that enterprise?

A. No.

Q. Did Juan Lucero live at this spring at any time?

Mr. CATRON: Object, as no proper foundation has been laid for it.

A. No.

Q. What improvement did you make at that spring when you went there with the others?

Mr. CATRON: Object, as no proper foundation has been laid for it.

The COURT: Ask the question.

A. We threw—made a—dug the earth for a reservoir, and we made a little ditch, and we carried the ditch to a place where we could irrigate with the water from the ditch, at a little valley.

Q. When did you first know of any claim that Ventura Trujillo had to this property?

A. At the time that we went to take possession of the spring.

Q. What was understood to be the character of his interest in the property?

Mr. CATRON: I object.

Q. I withdraw the question for the present.

Q. Previous to the time you and these others went to the spring, how was the spring used?

A. The water from it ran through an arroyo.

Q. How was it used?

A. The water was only used by travellers; they took it from the arroyo.

Q. Was any one pasturing at that place; if so, who?

A. I know by information that they used it; ranched there during the winter.

Mr. CATRON: I ask that that be stricken out as being hearsay.

The COURT: We will not pass on it now.

Q. Did you ever see any cattle there pasturing?

Mr. CATRON: Object as leading.

The COURT: He may ask it.

A. No.

Q. That is all.

Cross-examination by Mr. CATRON:

Q. You are one of the claimants to land within the limits of this grant, are you not?

A. No.

51 Q. You have been served as a defendant in this case, have you not?

A. Yes.

Q. You took up some land within the limits of this grant at one time, did you not?

A. Yes.

Q. Filed on it in the land office?

A. No.

Q. How does it happen that there is an application in your name down here in the land office for a piece of land within this tract?

A. The application for the land for which I applied is at Chupaderos.

Q. This land extends to Chupaderos, does it not; the land you claim extends out to and includes Chupaderos, does it not?

A. No.

Q. How far is Chupaderos from the Apache spring?

A. About 4 miles.

Q. In what direction?

A. They are to the west.

Q. How far is Chupaderos from Lagunitas?

A. The boundaries are right adjoining.

Q. Which direction is Chupaderos from Lagunitas?

A. To the west.

Q. Which is west?

A. Chupaderos.

Q. How far from Lagunitas is Chupaderos, if it is to the west of it?

A. About a quarter of a mile.

Q. Do you know what the boundaries of the land are to which Mr. Hays makes claim on the west?

A. No.

Q. You do not know, then, whether it extends to the west of Chupaderos or not, do you?

A. No.

Q. You have been summoned as a defendant in this case, have you not?

A. I have been summoned by the Government.

Q. Was that summons to you to appear here as a defendant in this case?

A. Yes.

Q. On which side of the Cañon de la Lagunitas are you?

A. To the west. I do not know the Cañon de la Lagunitas, but I am to the west from Lagunitas.

Q. How far is Lagunitas from Ojo del Apache?

A. It is about three miles and a half.

Q. How old were you in 1840?

A. Seven years old.

Q. Where did you live at that time when you were 7 years of age?

A. I was with my father, living right in Chupaderos under his control.

Q. How long did you live there?

A. Until the present time.

Q. Was that the first time when you ever passed by this property in the year 1840?

A. Yes.

52 Q. You were then 7 years old?

A. Yes.

Q. Where were you going?

A. I was hunting up some animals.

Q. How long were you at the spring?

A. I just went down in the spring and took some water and rode away with the animals.

Q. Then you say the next time was in 1855, when you went there to take possession?

Mr. POPE: I object, as he did not say that.

The COURT: The question may be asked.

A. Yes.

Q. What time in the year 1855 was it that you went there to take possession?

A. I am not certain about it; I am not positive; but I think it was in autumn, during the autumn.

Q. Was it as early as September, or before September or after September?

A. It was about September.

Q. Did you know Juan B. Lucero at that time?

A. No.

Q. Did you go to take possession for yourself or for somebody else when you went there in 1855?

A. I was asked by another person.
Q. Who?
A. Rafael Salazar.
Q. Where is Rafael Salazar now?
A. He is in Colorado.
Q. How old were you in 1855 when you went there to take possession?
A. I was about 23 or 24 years of age.
Q. Were you married?
A. I was married.
Q. Where was your family?
A. My family was in Puertecito, in the house of Rafael Salazar.
Q. How far is Puertecito from the Ojo del Apache spring?
A. About 9 miles.
Q. What direction?
A. To the west.
Q. Were you related to Rafael Salazar in any way?
A. I was his son-in-law.
Q. Your wife was then residing in the house of her father, was she?
A. She was only there temporarily.
Q. When did you first know Juan B. Lucero?
A. I did not know him.
Q. Did you never know him?
A. No.
Q. Did you ever know Juan Nepomuceno Lopez?
A. No.
53 Q. You say you never knew Ventura Trujillo?
A. No.
Q. Did you know any of his children?
A. Yes.
Q. What ones did you know?
A. Jose Francisco Trujillo, Andrea Trujillo.
Q. Whose wife was she?
A. Of Juan Catarino Romero.
Q. Did you know any other children?
A. No.
Q. What did you do when you went to take possession of the spring in 1855?
A. To dig a ditch from the spring to a little piece of land that was susceptible of irrigation.
Q. How large was that tract of land?
A. It was about 350 varas of land.
Q. In width or length?
A. In width.
Q. How wide was it?
A. It might have been less than 250 varas
Q. It might have been less than 25 varas, might it?
A. Yes.
Q. You and Rafael Salazar, Jose Maria Martinez, Gabriel Valen-

cia, and Jose Abad went there to take possession of that little piece of land, did you?

A. Yes, and others.

Q. How many more were with you?

A. About 13 of us.

Q. Your intention was to cultivate it, was it?

A. Yes; the piece of land.

Q. Was that piece of land enough for 13 of you to live on?

A. I do not think so.

Q. You did not stay there, then, very long, did you?

A. No.

Q. How long did you stay?

A. About 20 days.

Q. Then you all went away at the same time, did you?

A. Yes.

Q. And they never returned there to occupy the land?

A. Never, except a man named Crescencio Baca—I know this from information—in '59.

Q. Crescencio Baca remained there, did you say?

A. No; he also went away.

Q. What did you say about Crescencio Baca about the year '59?

A. He built a shanty there to sell some liquor.

Q. Was there any one else with Crescencio Baca at that time?

A. I do not know.

Q. Was Juan B. Lucero there with him?

A. I do not know.

Q. You do not know much that took place there, then, after '55, do you?

A. Not personally, but I know from information about the possession of Crescencio Baca.

Q. I do not want your information; I only want your per-
54 sonal knowledge; you did not see Crescencio Baca there, then; you only heard that he was there?

A. I did not see him.

Q. And you really do not know that he did go there of your own personal knowledge?

A. No.

Q. Of your own personal knowledge, you do not know whether anybody was on this property between 1840 and 1855, do you, of your own personal knowledge, without what other people told you?

A. Yes; I know.

Q. You said that you were not there during that time. How could you know it except by information?

A. I passed, traveled by that place several times before the year 1855.

Q. You said a while ago that you only went there in 1840, possibly one time before 1855, did not you?

Mr. POPE: Object to that, as he did not say it.

The COURT: He may ask it.

A. Yes; but I was one time there.

Q. That is all the time that you remember that you were there, is it, that you are positive of it, before 1855?
A. Yes.
Q. Then, between the time when you was there that one time in the summer of 1855 you do not know who was at the property, of your own knowledge?
A. No.
Q. That is all.

Redirect examination by Mr. POPE:

Q. How many times did you pass there between 1840 and 1855?

Mr. CATRON: We object to that, as he has answered it in chief.
The COURT: He may answer it.

A. I remember one time.
Q. Do you remember any other times?
A. I do not remember.
Q. What year was that you passed there?
A. In the year 1840.
Q. How many times subsequent to the year 1840?

Mr. CATRON: Object to that; he has already stated.
The COURT: You might ask him to fix the time.

A. I only remember passing by one time.
Q. What year was that?
A. In the year 1840.
Q. When was the next time you passed there?
55 A. I was afterwards at the Ojo del Apache in the year 1855.
Q. You never passed there between 1840 and 1855?

Mr. CATRON: We object, as he has answered that.
The COURT: Proceed. He said he was in 1840, and not again until 1855.

A. No.
Q. That is all.

Mr. CATRON: That is all.

JAMES H. WALKER, a witness of lawful age, being produced, sworn, and examined on the part of the Government, testified, upon direct examination by Mr. Pope, as follows:

Q. What is your name?
A. James H. Walker.
Q. What official position, if any, do you hold?
A. Register of the land office—U. S. district land office—Santa Fé, New Mexico.
Q. Are you acquainted with the section of New Mexico around in between Tecolote grant on the north and the Anton Chico grant on the south and the —— Ortiz grant on the east, a triangular piece of land there?

Mr. CATRON: We object to that.

Q. I mean land not included in any grant—any confirmed grant.

Mr. CATRON: We object to that.

No ruling.

A. I can tell so by these plats. That is the Tecolote grant, as shown by this plat, and here is the Anton Chico grant. These are the plats that Mr. Coleman asked me to bring up.

Q. I will get you to refer to the plat of New Mexico made by the General Land Office in the year 1894, and direct your attention particularly to that tract of land included between the —— Ortiz grant on the east and the Preston Beck and Anton Chico grant on the south.

A. That is this tract right in here; that is in township 13 north, ranges 16 and 17 east, and there is one there in 14 north, 17 east. I have the 13, 16, and 17; I have not the 14.

Q. Now, I will get you to state whether the public surveys have extended over that triangular tract as you have described it.

Mr. CATRON: We object to that and ask that that part extending over the public surveys be stricken out.

56 The COURT: It goes in under your objection.

Q. Refer to your plats and state what entries, if any, have been made in those subdivisions of public land.

Mr. CATRON: We object to that, as it is irrelevant, immaterial in this case. We object to all this.

The COURT: Any part that has been entered and completed and not excluded by confirmation.

A. In township 13 north, range 16 east, the survey was made July 8 to 22, 1887, and the plat filed in my office on the 7th day of February, 1889, and the one in 13 north, 17 east, was surveyed July 23 to July 5th. There was evidently a mistake in the year; it should be 1887, I think, or 1888; I do not know which. They have got it 1886, but I know it is wrong, because the township lines were surveyed in July, 1887, and these could not have been delivered until after that, and they were made in 1886; they have evidently made a mistake.

Q. I will get you to state what entries have been made on public land in these townships.

Mr. CATRON: I now ask that this testimony be stricken out because the surveys did not extend over this land in 1887. A petition was filed before the surveyor general twenty years prior to any survey of this land.

Mr. POPE: And it was rejected by the surveyor general.

Mr. CATRON: It was not rejected at our instance; it was rejected at the instance of the other side.

The COURT: If this land has been disposed of by the Government it will be excluded from the confirmation in case we confirm the grant.

Mr. POPE: I offer to prove by the records here that homestead entries have been made under the public land laws.

The COURT: The question as to whether an uncompleted homestead is such disposition of the land as is contemplated is one that this court has not determined.

Mr. POPE: I desire to have it in the record that the surveys have been extended over this land, and I offer to prove this. We ask leave of the court to withdraw these plats.

The COURT: You can make copies of them.

57 JUAN DE JESUS JARAMILLO, a witness of lawful age, being produced, sworn, and examined on the part of the Government, testified, upon direct examination by Mr. Pope, as follows:

Q. What is your name?
A. Juan de Jesus Jaramillo.
Q. Your age?
A. Seventy-six years of age.
Q. Where do you live.
A. In El Viandante, on the Rio Pecos.
Q. Where did you live prior to the time you moved to your present place?
A. In Jorupa.
Q. When did you move from Jorupa to the place where you now live?
A. About the year '76.
Q. Previous to your removing how long did you live at Jorupa?
A. About ten years.
Q. Where were you born?
A. In Los Corales, on the Rio Grande.
Q. How old were you when you went to Jorupa to live?
A. I was born in the year '20, and I moved to Jorupa about the year '62.
Q. Do you know the place Ojo del Apache?
A. Yes.
Q. When did you first know the Ojo del Apache?
A. In the year '40.
Q. How did you come to know it then?
A. I was herding some sheep.
Q. Where were you herding sheep?
A. At Ojo del Apache.
Q. How long did you herd sheep there?
A. About one month.
Q. Was any one living there at that time?
A. No; it was vacant.
Q. Where were you living at that time?
A. In Puertecito, on the Rio Pecos.
Q. How far is that from the spring? Was it near or far?
A. I do not understand anything about miles.
Q. Was it near or far?
A. It is far.

Q. Did you from that time know this spring?
A. Yes.
Q. State when you visited the spring subsequent to that time. If so, when?
A. In the year '52; about the year '52.
Q. Was any one living at the spring then?
A. No; I did not see any one.
Q. You would have seen any one if they had been living there?

Mr. CATRON: We object to that.

A. Yes.
Q. Were there any houses at the spring at that time?
A. I did not see any.
Q. Any corrals?
A. I did not see any.
Q. Any acequias?
A. I did not see any.
58 Q. Did you know Ventura Trujillo?
A. Yes.
Q. Where did Ventura Trujillo live at that time?
A. In San Miguel; a little below the place.
Q. Did he have his family living at Ojo del Apache at that time?
A. No.
Q. Was he cultivating any land there at the spring?
A. No.
Q. Did he have any cattle at that time?
A. No.
Q. Did you ever know of Ventura Trujillo living at the Ojo del Apache?

Mr. CATRON: We object, as it is impertinent and immaterial whether he did or not.
The COURT: Ask it.

A. No.
Q. How was the spring used at that time, in 1852?
A. I only saw animals coming down to that place.
Q. Whose animals were at the spring?
A. Perhaps strayed animals.
Q. Were you ever at the spring between 1840 and 1852?
A. No.
Q. What was the general reputation at that time as to who owned the property at this spring, if it was being owned by any one?

Mr. CATRON: We object, as it is immaterial and not the best evidence and no foundation laid for it.
The COURT: He may ask it subject to the objection.

A. In the year '62 the late Mr. Cresencio Baca was residing at that place. That was the first resident that I ever knew at that place.
Q. In 1852 was that regarded as belonging to any one or as public property or what?

Mr. CATRON: We object to that.

The COURT: He may ask it subject to the objection.

A. No. At that time I did not see any habitation there.

Q. How was it regarded—as being public land or being private land?

Mr. CATRON: We object to that. It is simply calling his attention to what he wants.

The COURT: That will be sustained.

Q. Do you know to whom that land belonged in 1852?

Mr. CATRON: We object to that as being immaterial and impertinent, no foundation laid for it, and not the best evidence.

59 The COURT: We do not think you ought to go into that.

Q. That is all.

Cross-examination by Mr. CATRON:

Q. Can you read and write?

A. I cannot; my eyesight is not very good now, and my hand is poulticed, so that I cannot write.

Q. Could you ever read?

A. Yes; I could a little.

Q. The place called Corales, where you were born, is in Bernalillo county, on the Rio Grande, is it?

A. Yes.

Q. What age were you when you left there?

A. My father told me—I do not know—that I was still sucking my mother's breasts when he transferred himself from the Rio Grande to the Jorupa.

Q. How long did you live at Jorupa?

A. I do not remember. From San Jorupa my father went to Puertecito.

Q. Tell him, please, to answer my questions. What age were you when you were at Puertecito?

A. I might have been about 15 years of age.

Q. How long did you remain in Puertecito?

A. I remained until the year '52.

Q. Where did you go to then?

A. Then I went to Lagunita.

Q. Then where did you go?

A. And from there to Jorupa.

Q. Where is Jorupa?

A. A little below Lagunita, on the same arroyo.

Q. Inside of this property?

A. What grant?

Q. The Hays grant.

A. I do not know if it is within or out.

Q. Do you know the road called the Comanche road there?

A. I know two roads in that vicinity that we call Comanche.

Q. The one that goes to Chupinas?

A. Yes.

Q. Do you live south or north of that road?
A. To the south.
Q. How far south of Jorupa is the road which goes to Chupinas?
A. The road runs right in front of the little town.
Q. What was your occupation between the years 1840 and 1852?
A. Farming.
Q. You were farming at Puertecito during that time, were you?
A. Yes.
Q. Did you own lands there?
A. I had a strip of land.
Q. Own that yet?
A. No.
Q. He can go.

Redirect examination by Mr. POPE:

Q. Is the Comanche road north or south of Jorupa?
A. South.
60 Q. How far?
A. To the south, right near by; the road passes in front of the houses.
Q. How far is Puertecito from San Miguel?
A. It is somewhat far; ten miles, I guess. I do not understand about miles.
Q. Did you know Ventura Trujillo during his lifetime?

Mr. CATRON: We object to that.

A. Yes.
Q. Was he a man of property or poor? What was his worldly condition?

Mr. CATRON: It makes no difference whether he was rich or poor.
The COURT: He may ask the question subject to the objection.

A. I knew him to be a poor man.
Q. Did he have much cattle or sheep, or anything of that kind?

Mr. CATRON: We object to that.

A. I did not know any.
Q. Where did he die?
A. I do not know.
Q. That is all.

Recross-examination by Mr. CATRON:

Q. How far is the place where you lived, at Puertecito, to San Miguel?
A. I think about four miles.
Q. You did not know anybody at San Miguel, did you, at that time?
A. No.
Q. You did not visit San Miguel often, did you?
A. Yes.

Q. How often did you visit San Miguel from the year 1840 to 1852?
A. About every Sunday, almost.
Q. You went to mass. Is that it?
A. Yes.
Q. As soon as mass was over you went home?
A. Yes.
Q. You did not go around enquiring what the people up there knew, did you?
A. No.
Q. You are entirely ignorant on that subject, are you?
A. Yes.
Q. That will do.

Mr. POPE: That is all.

NICOLAS APODACA, a witness of lawful age, being produced, sworn, and examined on the part of the Government, testified, upon direct examination by Mr. Pope, as follows:

Q. What is your name?
A. Nicolas Apodaca.
Q. Where do you live?
A. In Lagunita.
61 Q. What is your age?
A. I am about between 62 and 63.
Q. How long have you been living in Lagunita?
A. The first time I lived at Lagunita was from 1852 to 1857. I was married in 1852 there.
Q. Where did you live before that?
A. In Puertecito.
Q. Do you know the Ojo del Apache spring?
A. Yes.
Q. How long have you known it?
A. I knew it in the year 1842.
Q. How did you come to know it in the year 1842?
A. I was herder for me uncle.
Q. Do you remember what part of 1842 you were there?
A. Yes.
Q. What month?
A. I remained May, June, July, August, and September, herding there.
Q. You say you were herding your uncle's flocks?
A. Yes; some animals belonging to my uncles.
Q. Did you know Ventura Trujillo?
A. Yes.
Q. When did you first know Ventura Trujillo?
A. I had known him in San Miguel, and I also saw him at the Ojo del Apache in the year 1842.
Q. Just tell the court as to seeing him at the Ojo del Apache, how long he stayed, and anything connected with his coming there.
A. He stayed there about two or three days only.

Q. Do you remember when that was?
A. About April or September. It was in that year.
Q. Do you remember the exact month?
A. It was about April or May; in one of those two months.
Q. Did he come back to the spring while you were there?
A. No; I never saw him again there.
Q. Who was there with him when he came, at the time you speak of?
A. I understood that there was a son of his with him.
Q. Did he bring any animals?
A. No; if I would see them now I would recognize them.
Q. What did they do at the spring?
A. They made a kind of a dam with some brush and rocks, and then they came back.
Q. Did they have any oxen with them, or anything of that kind?
A. They had two oxen, one team of oxen, with them.
Q. Do you know whose oxen they were?
62 A. They said that they were oxen that had been loaned them by Don Lorenzo Lucero.
Q. Did they cultivate any land there that you know of?
A. No.
Q. While you were there did Damasio Salazar come there with them or any other one?
A. No; I did not see them.
Q. You knew Damasio Salazar, did you?
A. Yes.
Q. Did Rafael Aragon come there?
A. No; I did not see him.
Q. Did you know the Ojo del Apache after that time?
A. Yes.
Q. Did Ventura Trujillo ever live there?
A. No; never.
Q. Did any one live there?
A. At that place, at Ojo del Pache, there was no one living there that I saw, only Cresencio Baca, who had built a house.
Q. Who built the house?
A. My uncle, Cresencio Baca.
Q. Was there any house there when you went there?
A. No.
Q. Any cultivated land?
A. No.
Q. Any corrals?
A. No.
Q. When did Cresencio Baca go there?
A. My uncle, Cresencio Baca, went there in September.
Q. Do you remember what year?
A. In the year 1859.
Q. At the time you were there herd-ng sheep, did any one else herd there?
A. No.

Q. Between the year 1842 and the time Cresencio Baca built a house there, was the spring used for herding at all?

Mr. CATRON: We object, as no foundation has been laid for it.

A. The flocks used always to be watered there.
Q. Whose flocks?
A. They belonged to the Casados people and to various others.
Q. Did Ventura Trujillo use this as a pasturing ground, to your knowledge?
A. He never used it. He never had any animals.
Q. Where did Ventura Trujillo live?
A. In San Miguel.
Q. Where did he live when he died?
A. In San Miguel, a little below San Miguel, at Ojito Salado.
Q. Where did he and his family live from the year 1842 and up to the time of his death?

Mr. CATRON: We object to that, as there is no foundation laid for it.

A. In San Miguel.
63 Q. Did you know Damasio Salazar?
A. Yes.
Q. Where did he live?
A. At La Fragua, a little below Garambullo.
Q. Was he justice of the peace?
A. He was justice of the peace.
Q. State whether or not Damasio Salazar ever made grants of land to people in that vicinity.

Mr. CATRON: We object.
The COURT: We do not think that is competent.

Q. I desire, may it please the court, the record to show that I made the offer to prove that. That is all.

Cross-examination by Mr. CATRON:

Q. Where were you born?
A. In Puertecito.
Q. In what year?
A. Between the year 1832 and 1833.
Q. Was it between the year 1833 and 1834?
A. No; from the year 1832 to 1833.
Q. Then in the year 1840 you were only eight years old, were you?
A. Yes.
Q. In the year 1842 you were about nine years old.
A. Yes.
Q. Or about eight?
A. About eight.
Q. You did not know much about business at that time, did you?
A. No; I did not know anything about land business.

Q. When you were eight years old, what did you do, go to school?

A. I went to herd animals belonging to my uncles, to herd some goats.

Q. Who went with you?

A. In that year when I went and Ramon Gurule and Ruperta Sandoval.

Q. What kind of animals did you have?

A. Goats.

Q. How many?

A. About a hundred.

Q. It took three of you to take care of a hundred goats, did it?

A. No; Ramon Gurule herded some cows and Rupete herded also some of these goats.

Q. You moved about from place to place with them just as they do now?

A. Yes; grazing them.

Q. And whenever the night found you you stopped?

A. No; I went to Lagunita to sleep.

Q. You made your headquarters at Lagunita, did you?

A. Yes; lived there.

Q. You lived at Puertecito, did you?

64 A. Yes; I lived at Puertecito, but would go there to herd, and my uncles would farm at that place, and they would let me have some land also to farm.

Q. That was in 1842?

A. Yes.

Q. Then you said you were at the Ojo del Apache spring during the months of May, June, July, and August and September, were you?

A. Yes; working there.

Q. What was you working at during these months?

A. Cultivating, planting, and farming.

Q. Then during these months of May, June, July, August, and September, 1842, were not you working any lands at Lagunita?

A. I went with the goats, because my uncles would work on my land.

Q. Did you work any lands somewhere else?

A. No.

Q. Then you took the goats out in any direction you pleased from Lagunita, did you?

A. Yes; where they would ask me.

Q. And come back at night and stay there all night?

A. Yes; I would return home.

Q. And stay until the next morning?

A. Yes.

Q. And after the year 1842 where did you live up to 1852?

A. Between the years 1842 and 1852 I lived at Puertecito and Lagunita.

Q. You say you saw Ventura Trujillo at Ojo del Apache in 1842?

A. Yes.

Q. He was there with his son, you say?
A. Yes; I think it was a son of his.
Q. Was it Francisco Trujillo?
A. It might have been that one or another one; I do not know them now.
Q. Did you know Encarnacion Lopez?
A. No.
Q. Boys in those times did not get acquainted ver- far away from home, did they?
A. No.
Q. In those times Indians were pretty bad, were they?
A. Yes.
Q. And when they sent out you boys with sheep they did not let you go ver- far away from home, did they?
A. No.
Q. They told you to keep close in?
A. Yes; near the houses.
Q. While you were herding goats *that* at any time did the Indians come around?
A. No; I never saw them.
Q. Did you ever see an Indian?
A. Yes; when I was already grown I saw Indians.
65 Q. While you were herding at that time did any Indians come around you?
A. No.
Q. You stayed in close at home where the Indians would not come, did you?
A. Yes; we herded near the places.
Q. In the year 1852 to 1857 you were married, you say?
A. I was married in 1852.
Q. And from that time you lived where?
A. I lived in Lagunita from 1852 to 1857.
Q. Where were you in the year 1843?
A. At Ojo del Apache.
Q. Living at Ojo del Apache?
A. No.
Q. How long were you at the Ojo del Apache in 1843?
A. I would go there to herd some days and would return to the house.
Q. How many days were you there during the year 1843?
A. I do not remember, but went there many days.
Q. And from the year 1842 where were you?
A. In 1842 I was in Lagunita.
Q. In 1844 where were you?
A. I was at my house in Los Rincon.
Q. Where is Rincon?
A. It is on the opposite Puertecito, on the other side of the river.
Q. And you stayed there until 1852, did you?
A. I remained there; yes; until the year 1852.
Q. From 1842 to 1852 you were at Rincon?
A. Yes.

Q. What were you doing there?
A. Farming.
Q. Did you have any land of your own?
A. Yes.
Q. Do you know how old you were?
A. Yes.
Q. How old were you in 1843?
A. I may have been 12 or 13 years old.
Q. If you were 12 or 13, then you were born in 1830?
A. I do not know.
Q. You are not a very good calculator, are you?
A. At the present I cannot take an exact account.
Q. Where were you when the Texans were captured at Anton Chico?
A. I was in my house.
Q. What year was that?
A. It was in the year 1841.
Q. Which house were you at?
A. In my house.
Q. At what place?
A. At El Rincon, where I lived.
Q. How old were you then?
A. I might have been 12 or 8 or 9?
66 Q. If you were 12 in 1841 you were born in the year 1839 were you; ain't that so?
A. I was born in the year 1831 to 1832.
Q. You have slipped back two or three years since you commenced to testify, have you not?
A. How do you mean?
Q. You say you are 62 years old?
A. From 1831 to 1832; how have I slipped back?
Q. How old are you today?
A. I am about 62 or 63.
Q. What is this year—what year are we in now?
A. We are in the year 1896.
Q. Now, take 62 years from 1896, how many will be left?
A. It may be 34.
Q. Then, you must have been born in the year 1834 if you are now 62, going on 63.
A. I was born between the year 1832 and 1833. If I had taken the certificate of my baptism I would know now.
Q. Do you know what property the people in San Miguel owned in the year 1842?
A. I do not know what they had.
Q. Whether there were many of them; you do not know anything about it, do you?
A. Yes, there were many of them; but I do not know how they held their lands.
Q. And there were many of them, and you do not know whether they had any animals or not, do you?
A. Yes; I know some that had and some that did not.

Q. There were some that you did not know anything about, did you?
A. Yes; some that I did not know anything about.
Q. You were pretty well posted about what everybody owned in San Miguel in 1842, were you?
A. No; about the place where I lived I knew, and at other places like San Miguel and some of them.
Q. You did not live in the place—San Miguel—did you?
A. No.
Q. Did you go to San Miguel often?
A. We would go to mass. I would go with my mother.
Q. And as soon as mass was over you would go home?
A. Yes.
Q. You only attended to mass when you went there?
A. Yes.
Q. You did not enquire what property the people owned?
A. No.
Q. You did not see Damasio Salazar at Ojo del Apache?
A. I never saw him.
Q. He might have been there without your seeing him, might he not?
67 A. He might have gone; I do not know.
Q. And Rafael Aragon might have gone and you not have seen him?
A. I did not see him.
Q. He might have gone and you not have seen him?
A. Yes, but I do not know if he went.
Q. That is all.

Redirect examination by Mr. POPE:

Q. Did Encarnacio Lopez ever herd sheep at the Apache spring in 1842 or after that?
A. I did not know him.
Q. You never heard of such a person in that locality?
A. I do not remember.
Q. Did you ever know of such a person working for Ventura Trujillo?
A. No.
Q. That is all.

Mr. CATRON: That is all.

MANUEL APODACA, a witness of lawful age, being produced, sworn, and examined on the part of the Government, testified, upon direct examination by Mr. Pope, as follows:

Q. What is your name?
A. Manuel Apodaca.
Q. When were you born?
A. In the year 1824.
Q. Where were you born?

A. At Rincon de las Bacas.
Q. Where did you live when you were a boy?
A. In Rincon de las Bacas.
Q. Do you know the Apache spring?
A. Yes.
Q. When did you first know it?
A. In the year 1842.
Q. How did you come to know it?
A. I knew it vacant.

Mr. CATRON: We object to that as not being responsive.

Q. Did you know it after that?
A. Yes; I knew it after that.
Q. How did you come to know it after that?
A. I knew it without any circumstances.
Q. Were you ever there?
A. Yes.
Q. How many times were you there?
A. I do not remember how many times I was there; several times, but I do not remember the number of times.
Q. What were you doing there?
A. I would go there hunting up some animals.
Q. What was the year, do you remember?
A. Yes; in the year 1842 I was there.
68 Q. And any years after that?
A. Yes.
Q. At the time you knew this spring who was living there, if any one?
A. No; there was nobody there.
Q. Did you know Lorenzo Lucero?
A. Yes.
Q. Was he related to you in any way?
A. Yes.
Q. Did you know Ventura Trujillo?
A. Yes.
Q. Did you ever see Ventura Trujillo at the house of Lorenzo Lucero?
A. Yes.
Q. In what year did you see him at the house of Lorenzo Lucero?
A. In the year 1842.
Q. I will get you to state to the court the circumstances under which you saw him there; get you to state how he came there, and what was said, if anything, while he was there; what was said by him.

Mr. CATRON: We object as to what was said by him.
The COURT: Take it subject to the objection—anything about this land.

Q. Did Ventura Trujillo come from any place while you were there?
A. From Ojito del Apache.

Q. Now, just state anything he said about the Ojito del Apache when he came, and to whom.

A. He said to Don Lorenzo Lucero when he came there from Ojo del Apache and—Don Lorenzo Lucero asked him: Sir, how are you farcing with your lands at Ojo del Apache? He said, How are you making it with your land at Ojo del Apache, compadra? and Don Ventura Trujillo answered, Well, sir, I went to work at that land at Ojo del Apache that was given to me by Damasio Salazar, but was not successful in it because the water is not enough.

Mr. CATRON: We object to any conversation with Ventura Trujillo.

Q. Did he state anything further in connection with the matter at that time?

Mr. CATRON: We object to any conversation, because it does not bind us, as he is dead.

The COURT: Take it subject to the objection.

A. He said the three dollars that I paid to Don Damasio Salazar for that hijuela was worth more than the whole Ojo del Apache.

Q. Did he say as to his having any other interest in the land?

Mr. CATRON: We object to that.

69 A. He says that he was not interested in it.

Q. Were you ever at Ojo del Apache subsequent to that time—after that time?

A. Yes.

Q. How many times were you there after that?

A. I do not remember how many times, but I was there.

Q. Did Ventura Trujillo live there when you were there?

A. No.

Q. Was anybody living there at that time?

A. No.

Q. Where was Ventura Trujillo living at that — when you went there?

A. In San Miguel.

Q. Do you know where Ventura Trujillo died?

A. I think he died in San Miguel, because he lived there.

Q. Did you ever hear of his living at Ojo del Apache?

Mr. CATRON: We object to that as hearsay.

The COURT: Take it subject to the objection.

A. No.

Q. When you were at Ojo del Apache was there any houses there?

A. No.

Q. Any cultivated lands?

A. No.

Q. Any corrals?

A. No.

Q. Was that used as a pasture ground at that time?

Mr. CATRON: Object, as it is leading.
The COURT: Ask it.

A. Yes.
Q. By whom was it used?
A. Anybody; they were common pasture grounds.
Q. Who pastured there that you know of?
A. So many herders pastured there that I did not know who they were.
Q. Did Ventura Trujillo pasture his animals there?

Mr. CATRON: We object to that because there is no foundation laid for it.

A. No.
Q. Did Ventura Trujillo have any cattle or oxen?

Mr. CATRON: We object to that, as there is no foundation laid for it.

A. I do not know. I never knew them.
Q. Did you know Damasio Salazar?
A. Yes.
Q. Did you ever talk with him in regard to this land that Ventura Trujillo had?
A. Yes.
Q. Did Salazar, in that conversation, ever say anything to you about his having been authorized by any one to give him that land?

70 Mr. CATRON: Object to that, as we are not bound by his acts.

The COURT: That would not be competent unless the declaration was made in the presence of the other party.

Q. Was Ventura Trujillo present at any time when you had a conversation with Damasio Salazar in regard to this land?
A. No.

Mr. POPE: We offer to prove by this witness that Damasio Salazar made concessions of land at that time to numerous parties in that vicinity, claiming to have the right to do so; and we offer to prove further in his conversation with this party he never claimed to have any right through Governor Armijo to make a grant to this man or any other man; he claimed the right of his own free will.

Q. That is all.

Cross-examination by Mr. CATRON:

Q. You say you were born in Rincon de las Bacas?
A. Yes.
Q. How long did you live there?
A. I have always lived there; I was born there.
Q. How far is Rincon de las Bacas from the Ojo del Pache?
A. It is somewhat far.

Q. Fifteen or twenty miles?
A. It is possibly that far.
Q. How old were you in the year 1842?
A. I think I was about 18.
Q. Where were you living in 1842?
A. In the Rincon de las Bacas.
Q. What was your business?
A. Farming.
Q. Did you cultivate lands at Rincon de las Bacas in the spring and summer of 1842?
A. Yes.
Q. In those times the Indians were quite dangerous in that section of the country, were they not?
A. Yes.
Q. People did not travel around a great deal at that time, did they?
A. Yes.
Q. State whether they did or did not.
A. They did not travel because of the Indians were very bad.
Q. And people kept their herds pretty close at home, did they not?
A. Yes.
Q. Is there a town at the place Rincon de las Bacas?
A. It is not a town; there are only a few houses.
Q. How far is it from San Miguel?
A. About seven miles.
71 Q. The people in those little towns did not pay much attention to the people in the other little towns, did they, at that time?
A. No.
Q. They did not know what the people in the other towns owned, did they?
A. No.
Q. Nor did they know what the other people in the other towns did, did they?
A. No.
Q. You say you were at the Apache springs in 1842?
A. Yes.
Q. What month?
A. About March or April.
Q. What day of the month was it?
A. I do not remember.
Q. You say you were there looking for some lost animals?
A. Yes.
Q. You then went on by the place—you did not stop?
A. No; I did not stop.
Q. Then, you did not return to that place for a great may years afterwards?
A. I did not return for many years.
Q. You did not return until about 1855, did you?
A. Yes.

Q. Where was this place where you had a conversation with Salazar about the land of Ventura Trujillo?
A. In Los Chupaderos.
Q. What time was that?
A. It was about March or April.
Q. Of the year 1842?
A. In the year 1842.
Q. You are sure about that, are you?
A. I was there.
Q. You are not mistaken about the time?
A. No.
Q. Who else was present?
A. I do not remember; I do not remember if there was any other person present.
Q. Was it in the house or outdoors?
A. In the house of Lorenzo Lucero.
Q. You are not mistaken about it being March or April, 1842, are you, that that conversation took place?
A. No.
Q. You are just as certain about that as you are about anything else you have told here, are you?
A. Yes.
Q. What makes you remember so particularly it was the month of March or April when that conversation took place?
A. Because it was at that time.
Q. Do you remember what else took place in the month of April during that year?
A. No.
72 Q. That is the only thing that you remember that took place during these two months?
A. Yes.
Q. You were there during these two months, were you?
A. Yes.
Q. But you have forgotten everything that took place, although you were there?
A. What do you mean by my forgetting?
Q. You say that you remember that conversation took place in March or April, and you do not remember anything else?
A. I do not remember.
Q. Why is it that you can remember one thing better than you can another during these months?
A. Because I do not.
Q. Where were you in the month of January, 1842?
A. I was at Lagunita.
Q. What were you doing there?
A. I was working with my uncles.
Q. What kind of work?
A. Breaking lands.
Q. In the month of January, 1842, you were breaking up lands, were you?
A. And in March and in April.

Q. What did you do in the month of December, 1841?
A. Planting.
Q. Did you plant down there in the month of December?
A. No; in April.
Q. Did you plant in the month of January?
A. No.
Q. It sometimes freezes down there in the months of December and January, don't it?
A. Yes.
Q. Sometimes there is snow there?
A. Yes.
Q. You do not know whether there was snow on the ground in the month of January, 1842, or not, do you?
A. No; I do not know.
Q. You do not know whether the ground was frozen?
A. Yes.
Q. How do you know it was frozen?
A. Because it was very cold.
Q. How cold was it that year in January, 1842?
A. I do not know, but it was cold.
Q. Then you did not cultivate the ground during the time it was so cold, did you?
A. No.
Q. Then when you said a while ago that you were cultivating ground in the month of January, 1842, you did not state facts, did you?
A. We were breaking land.
Q. Do you break up ground when it is frozen?
A. At that time it was not frozen, in March and April.
Q. I asked you about January; do you mean to say that you were breaking up the ground in the month of January?
73 A. Yes; we were living at Lagunita; I was there with my uncles.
Q. But you were breaking up ground in the month of January?
A. Yes; we were living there and breaking up lands.
Q. Were you married then?
A. No.
Q. Do you remember how old you were when you were married?
A. I do not remember.
Q. Don't you think that is a circumstance that you might remember pretty well?
A. Yes; but a man has more to remember.
Q. But that is a very important thing to a man, is it not—getting married—and ought he not to remember that?
A. Yes; but I do not remember.
Q. Your memory is not very good now, is it?
A. It may be that way.
Q. You remember as well now as you did fifty years ago?
A. I do not think so.
Q. There are a great many things that you have forgotten, are there not?

A. It is possible that it is so.
Q. Most everything is a little foggy about your memory, is it not?
A. It may be that way.
Q. Who has been down there asking you about your evidence you would give?
A. Where?
Q. Down at your place.
A. That man there (pointing to Mr. Tipton).
Q. That man with the red mustach-?
A. Yes.
Q. He told you what he wanted you to testify to, did he?
A. No.
Q. What did he tell you to do?
A. He asked me if I knew anything about the land of Ventura Trujillo.
Q. Then you did know that Ventura Trujillo had some land there?
A. Yes.
Q. At Ojo del Pache?
A. Yes.
Q. That is all.

Redirect examination by Mr. POPE:

Q. You know also that he abandoned that land, don't you? Do you know what he did with that land?

Mr. CATRON: We object.
The COURT: He may ask it.

A. I do not know, sir, that Ventura Trujillo made any improvements on his land.
Q. Who first built a house out there?

74 Mr. CATRON: We object, as he is going into the case-in-chief again.
The COURT: That is a new matter; that is not redirect examination; it is new matter.

Q. You said you were in 1842 at Ojo del Apache?
A. Yes.
Q. When were you there the next time?

Mr. CATRON: We object to that; it is simply explanatory.
The COURT: He may ask it.

A. I do not know when I was there again. I do not remember, but I know that the person first to make some improvements at Ojo del Apache was Cresencio Baca.

Mr. CATRON: I move to strike that out.
The COURT: It may be stricken out.

Q. When Ventura Trujillo came to the house of Lorenzo Lucero did he bring any oxen with him?

Mr. CATRON: We object to that; he has testified that he does not remember the matters that took place.

The COURT: He may ask it.

A. He had no oxen, he himself in person, but it was said that he had taken a team of oxen.

Q. Whose oxen?

Mr. CATRON: We object to that as being incompetent.

The COURT: That we do not think is competent.

Q. Who said that he had taken a team of oxen?

Mr. CATRON: We object to that.

The COURT: Sustained.

Q. Do you know how long Ventura Trujillo had been away from Ojo del Apache when he came back?

Mr. CATRON: We object to that.

The COURT: He may ask him if he knows.

Q. When Ventura Trujillo went from Ojo del Apache the first time, I was not at the house of Lucero, but I was present at the time when he returned to the house of Lorenzo Lucero from Ojo del Apache. I have stated that he returned alone to the house of Lorenzo Lucero, and I was there then.

Q. Between that time and the time Cresencio Baca made
75 improvements were you at the Ojo del Apache?

Mr. CATRON: We object to that.

The COURT: He may ask it.

Q. Between the time of this conversation in the year 1855 did you visit the Ojo del Apache?

A. No.

Q. Were you there after this conversation the first time?

A. I do not remember.

Q. How long was it—a long or short time?

Mr. CATRON: Object to that.

A. A short time.

Q. Was it as much as a year?

A. I do not remember.

Q. As much as two years?

Mr. CATRON: Object to that.

The COURT: The witness cannot fix the time.

Q. That is all.

Mr. CATRON: That is all.

Mr. POPE: It is admitted by the Government that there is no grant paper from Governor Armijo to Ventura Trujillo in the possession of the alcalde of San Miguel del Bado, New Mexico.

The COURT: Take an adjournment until ten o'clock tomorrow.

The hour of ten o'clock of November 16th, 1896, having arrived,

the further hearing of the above-entitled cause was resumed, and the following proceedings were had therein in open court:

Mr. POPE: It is agreed that a portion of the Spanish and Mexican archives in this Territory were lost, sold, or destroyed in the year 1870, containing grants and other papers. It is further stipulated between the parties that the index made by Antonio B. Vigil, completed in the year 1851, and entitled a general index of all documents of the governments of Spain and Mexico up to the year 1846, contains no mention of any grant of the Ojo del Apache case.

Mr. CATRON: We admit that the index was so made, but we do not admit that it contains all the papers which were in the archives. It is admitted that the index does not contain any reference to the Cubero grant.

76 The COURT: The book contains no reference to this grant, found in the surveyor general's office, completed in the year 1851.

Mr. POPE: We introduce in evidence all the papers in reported number 72.

Mr. POPE: It is further stipulated between the parties that the Vigil index, before referred to, contains no reference to the grant papers in the case of Juan Chaves *versus* The United States, No. 1, Cubero case. It is further stipulated that certain archives in the Spanish and Mexican governments were lost or destroyed in the year 1837.

Mr. POPE: That is the Government's case, may it please the court.

The COURT: Anything further, Mr. Catron?

Mr. CATRON: Nothing further, your honor.

This is all the evidence that was introduced in the above-entitled cause.

SANTA FÉ, NEW MEXICO, *December 9th*, 1896.

I hereby certify that the above and foregoing thirty-five pages contain a full, true, and correct transcript of all the evidence introduced in the above-entitled cause.

W. J. McPHERSON,
Official Stenographer.

77 EXHIBIT A.

Translation.

Seal fourth. (Seal.) One-fourth real.

For the years eighteen hundred and forty and eighteen hundred and forty-one.

In this second demarcation San Miguel del Bado, on the second day of the month of July of the present year eighteen hundred and forty-two, before me citizen Damasio Salazar, justice of the peace of said precinct personally present appeared citizen Bentura Trujillo, citizen and resident of the first demarcation, soliciting the place and land commonly called the Ojito del Apache, to establish in company with his children, a farm on which he believes he will have the means necessary for the support of a large family, and to give tithes

(illegible) and the holy church their corresponding portions, and I said alcalde finding the petition to be a just one and acting in conformity with the supreme decrees, have made him said donation in the name of God and the supreme Mexican nation, so that as a good compatriot he may make use of it, observing the requirements which our laws provide, under the condition and restrictions that if he does not provide a protection to prevent the damages which may result to him, he is under obligation to bear them, it being commons and pasture grounds of the inhabitants of this precinct; and the boundaries corresponding to said grant are on the north the mesa; on the south the old road to Los Chupaines; on the east the Mesa de los Chupaines; and on the west the hills bordering on the Cañoncito de la Lagunita; and in order that this foregoing instrument may have the force and validity by law required the aforesaid Trujillo requested me to interpose my authority and judicial decree, and I the said justice declared that I would interpose and did interpose as far as I am authorized by law, those of my attendants signing with me with whom I act by appointment. for the notorious lack of a notary public there being none of any kind in this department. In form of law, to all of which I certify.

DAMAISO SALAZAR.

Attending:
RAFAL. ARAGON.
Attending:
SALVADOR GONZALES.

And it is given on this ante-stamped paper, there being none of the proper stamp.

SALAZAR.

78 The foregoing document of donation is now transferred by the heirs and by Legima, who is the widow of Trujillo, deceased, the donee, the same being in legal sale conveyed to citizen Juan Lucero, that he may in good faith possess, sell, and alienate the same to any person or persons according to his pleasure. The said land is and was acquired by donation, and Mr. Lucero can register the document, said sale having been made of our entire free will; and, further, no person shall bring suit or make any complaint upon the part of the widow, heirs, or successors, and if any one should do so, let him not be heard either in court or out of it, the said Lucero conforming himself to the circumstances and requirements in said document mentioned, for we only agree to make good the sale whenever required by the parties, in all else it remains at his responsibility and care, as we only sell him the document with our right, domicil, and occupancy which we had therein.

In witness whereof we have signed this extrajudicially with only three witnesses, but desire this to be as valid as if done judicially, and Juan Lopez, attorney for his mother and brothers and sisters, this 21st of September, 1855, at San Miguel del Bado.

JUAN NEPOMUCENO LOPEZ.

Witness: ANTO. ARMIJO.
Witness: JOSE ANTO. CASAOS.
Witness: MARCELINO MOYA.

I, the undersigned, clerk of the probate court, certify that the foregoing document and conveyance are registered in Book 3 of Documents of Conveyance, pages 36 and 37, this 10th day of May, A. D. 1866.

[SEAL.] JOSE L. RIVERA, *Clerk.*

The foregoing is a correct translation from the original in Spanish, to the best of my knowledge and belief.

J. H. WATTS, *Translator.*

Subscribed and sworn to before me, at Santa Fé, N. M., this 16th day of September, A. D. 1872. Witness my hand and official seal.

JOHN WATTS,
Notary Public.

79 SURVEYOR GENERAL'S OFFICE,
TRANSLATOR'S DEPARTMENT,
SANTA FÉ, NEW MEXICO, *September* 30, 1872.

The foregoing translation, having been by me compared with the original in Spanish now on file in this office and found correct, is hereby adopted as the official translation.

DAV. J. MILLER, *Translator.*

(Endorsed:) File 148. Ventura Trujillo. Translation. Grant to Trujillo and deed Lopez to Lucero.

This document is duly recorded on pages 106, 107, and 108 in vol. 4 of Land Claims Records in the office of the surveyor general.

80 Know all men by these presents that I, Juan B. Lucero, of the county of San Miguel, and Territory of New Mexico, for and in consideration of three hundred dollars, to me paid by John L. Taylor and Henry D. Gorham, of the county and Territory aforesaid, the receipt of which is hereby duly acknowledged, have conveyed, renounced, and demitted to the said gentlemen, John L. Taylor and Henry D. Gorham, their heirs and assigns, all the title, right, and property which I have in that part or parcel of land known by the name of the Ojo de Apache, situated in the county and Territory aforesaid, bounded and described as follows, to wit: On the north the mesa, to where it forms a point; on the south the old road to the Chupaines; on the east the Mesa of the Chupaines; on the west the hills bordering on the Cañon de la Lagunita, with all its privileges and appurtenances to it appertaining; to have and to hold the above-described premises to the said John L Taylor and Henry D. Gorham, their heirs and assigns, for their use and benefit forever.

And in witness thereof I sign and seal the present document on the 24th day of May, A. D. 1866.

his
JUAN B. LUCERO. x [SEAL.]
mark.

Signed and sealed in presence of—
LEVI J. KEITHLY.

(10 five-cent revenue stamps.)

TERRITORY OF NEW MEXICO, }
County of San Miguel. }

Be it remembered that Juan B. Lucero, who is personally known to me, one of the justices of the peace in and for the county and Territory aforesaid, to be the same person whose name is subscribed to the foregoing document as executing the same, this day appeared before me in said county and acknowledged that he had executed the said document voluntarily for the uses and purposes therein mentioned.

Given under my hand this 24th of May, A. D. 1866.

RUMALDO LUSERO,
Justice of the Peace.

I, the undersigned, clerk of the probate court, certify that the foregoing document was registered in Book 3 of Register of Documents, pages 23 and 24.

In testimony whereof I set my hand and the seal used by the probate court.

Vegas, New Mexico, May 10, 1866.

JOSÉ L. RIVERA,
[SEAL.] *Clerk of Probate Court.*

81 The foregoing is a correct translation of the original Spanish, to the best of my knowledge and belief.

J. H. WATTS.

Sworn to and subscribed before me this 16th day of September, A. D. 1872. Witness my hand and official seal.

JOHN WATTS,
[SEAL.] *Notary Public.*

SURVEYOR GENERAL'S OFFICE,
TRANSLATOR'S DEPARTMENT,
SANTA FÉ, NEW MEXICO, *September* 30, 1872.

The foregoing translation, having been by me compared with the original in Spanish now on file in this office and found correct, is hereby adopted for the official translation.

DAV. J. MILLER, *Translator.*

82 EXHIBIT "A."

Original in Spanish.

Sello Cuarto. (Sello.) Una Cuartilla.

Para los años de mil ochocientos cuarenta y mil ochocientos cuarenta y uno.

En esta 2a. Demarcasion de Sn. Migl. del Bado a los dos Dias del mes de Julio de este presente año de mil ochosientos cuarenta y dos. Hante mi el C. Damasio Salasar Jues de pas de dho. partido, conparesio presente pr. su propia persona el C. Bentura Truxillo vesino y rresidente en la primer Demarcasion de esta solecitando el punto y terreno qe. comunmente llaman el ojito del apache pa. poner una

finca de labor en conpa. de sus hijos en lo que considera tener los sustensilios nesesarios pa. el abasto de una familia cuantiosa y dar ha diez (torn) (illegible) y la Sta. yglesia la parte qe. le toca y llo Dho. Alcalde mirando el qe. es una solicitud justa t arreglandome a los supremos decretos le he agrasiado dha. dona ha nombre de Dios y de la suprema Nasion Mexicana pa. qe. como buen conpacriota haga uso á ellas guardando los rrequisitos qe. nuestras leyes previenen bajo la condicion y limites de que si no pone rresguardo pa. ebitar los Daños qe. le puedan sobrevenir esta en la obligasion de sufragarlos pr. ser unos sexidos y pasteos de los abitantes de esta Demarcasion; y son sus correspondientes linderos de Dha. posesion pr. el Norte la mesa el camino viejo de los chupaines por el sur; por el oriente la mesa de los chupaine y pr. el poniente las lomas qe. besindan con el cañonsito de la lagunita y pa. q. esta predicha escritura tenga la fuerza y balidacion qe. en Dro. se rrequiere me suplico el rreferido Truxillo einterpusiera mi autoridad y y judisial decreto y llo el Nominado jues dije qe. la einterponia einterpuse cuanto pr. Dro. mes conferidó firmando con migo los de mi asistencia con quienes acto por rresitoria a notoria falta de escribano publico qe. de ninguna clas lo hay en este Departamto. en la forma del Dro. qe. de todo Doy fe.

DAMAISO SALAZAR. [RUBRICA.]

De Assa.:
RAF'L ARAGON. [RUBRICA.]
De Assa.:
SALBADOR GONSALES. [RUBRICA.]

Y ba en el presente papel pasado pr. no aber del sello qe. corresponde.
SALASAR.

El anterior domento. de dona en esta ven es traspasado por los herederos y la Legima ques la viuda del finado Trujillo que fue Donado; esta en venta Legal se le traspasa al Cuidadano
83 Juan Lusero; para que la gose de buena fee bendiendola enargunarlar en la persona ó personas que mas sea su boluntad, dicho terreno es y fue adquerido en Dona; y el Sor. Lusero puede enrregistar el documento; Dicha benta ha sido con toda Nrra. boluntad; sobre que no habra quien le ponga pleito ni demanda alguna por la viuda herrederos ni subsesores y si alguno se lo pusiere no sea oido en Juicio ni fuera del; arreglandose Dho. Lusero a las sircunstancias y Requicitos que el mismo Documento menciona; pues solo le bendemos el Documento con Nrro. Derecho Domicilio y Vecindad que a el teniamos, para todo lo cual lo firmamos estrajudicial solo con tres testigos pero queremos que sea baledero como si Judicial fuera y Juan Lopez Apoderado por su madre y hermanos hoi 21 de Fbro. de 1855 en Sn. Miguel del Bado.

JUAN NEPOMUSENO LOPEZ. [RUBRICA.]

Testigo:
ANTO. ARMIJO. [RUBRICA.]
Testigo:
JOSE ANTO. CASAOS. [RUBRICA.]
Testigo:
MARCELINO MOYA. [RUBRICA.]

Certifico yo el abajo firmado Escribano de la Corte de Pruebas que el antecedente documento y traspaso quedan enrregistrados en el libro 3°. de trazpasos de documentos pagn 36 y 37 este dia 10 de Mayo A. D. 1866.

[SELLO.] JOSE L. RIVERA, *Escribano.*

(Endorsed:) This document is duly recorded on p. 115 of V. 4 of Land Claim Records, in office of surveyor general.

84 Sepan todos los hombres por estas presentes que yo, Juan B. Lucero, del condado de San Miguel y Territorio de Nuevo Mexico, por y en consideracion de trescientos pesos á mi pagados por John L. Taylor y Henry D. Gorham, del condado y territorio antedicho, el recibo de los cuales por el presente es debidamente reconocido, he traspasado, renunciado y hecho dimision á los dichos señores John L. Taylor y Henry D. Gorham sus herederos y asignantes, todo el título, derecho y propiedad que tengo en aquella porcion ó suarte de tierra conocido por nombre de Ojo de Apache, situado en el condado y territorio antedico, lindado y receñado como sigue, A. S. B., por el norte la mesa hasta donde forma punta; por el surd, el camino viego á los Chupaines; por el criente la mesa de los Chupaines; por el poniente las lomas que resindan con el cañon de la Lagunita, con todos sus previlegios y apertenencias que á ella pertenece De haver y tener los ariba traspasado premisos á los dichos John L. Taylor y Henry D. Gorham, sus herederos y asignantes, para el uso y beneficios de ellos para siemprey para que consta firmo y sello el presente documento á los 24 dias de Mazo, A. D. 1866.

JUAN B. LUCERO. su x marca. [SELLO.]

Firmado y sallado en la presencia de.
LEVI J. KEITHLY.

TERRITORIO DE NUEVO MEXICO, }
Condado de San Miguel. }

Sea tenido en acuerdo que Juan B. Lucero, quien es personalmente conocido por mi, uno de los juezes de paz en y para el condado y territorio antedicho, de ser la misma persona cuyo nombre está suscrito al documento á la buelta como otorgante de el, hoy mismo compareció ante mi, en el dicho condado, y confesó que ejecutó el dicho documento volutariamente para los usos y fines – el mencionados.

Dado bajo mi mano hoy 24 de Mazo, A. D. 1866.

RUMADO LUSERO,
Jues de Paz.

(10 estampas de a 5 ctvos, canceladas.)

Yo, el abajo firmado escribano de la corte de pruebas, certifico que el antecedente documento fue enregistrado en el libro 3° de registros de documentos, pag. 23 y 24 En testimonio de lo cual pongo mi nombre y el sello usado en la corte de pruebas.

Vegas N. M., Mayo 10, 1866.

JOSÉ L. RIVERA,
Escribano de la Crte de Pbas.

85 EXHIBIT "B."

In the Court of Private Land Claims, Santa Fé, New Mexico. August Term, 1896.

MAY HAYS *versus* UNITED STATES. } No. 101. Ojo del Apache Grant.

Depositions Taken Before Fuller, A. J., Federal Building, Santa Fé, New Mexico, August 22nd, 1896, 2 P. M.

Appearances: Messrs. Catron, Spiess & Gortner for plaintiff; ——, Esq., assistant U. S. attorney; Wm. H. Pope, for the Government.

PASCUAL BACA, a witness of lawful age, being produced, sworn, and examined on the part of the plaintiffs, testified upon direct examination by Mr. Catron as follows:

Q. State your name, age, and residence.
A. My name is Pascual Baca; I am 63 years old; I live at Anton Chico, Guadalupe county, New Mexico.
Q. Was you acquainted with Ventura Trujillo?
A. Yes; I knew him well.
Q. Is he living or dead?
A. He is dead.
Q. When did he die?
A. Many years ago; I do not remember.
Q. Was he or not living in the year '46?
A. Yes.
Q. Where was he living at that time?
A. He was living at Ojo del Apache.
Q. When did you first see him at Ojo del Apache?
A. In 1840.
Q. What was he doing there?
A. He lived there; he had a little ranch in '40.
Q. What improvements had he there, if any?
A. He had a little shanty, and he had planted cornfields and a little garden; that is what he had.
Q. Had he any other property there; if so, what?
A. Yes; he had furniture.
Q. Any animals?
A. Yes; goats and horses and burros; I do not remember whether he had any cattle or not.
Q. Where was he, if you know, in the year '42?
A. He was there yet and afterwards.
Q. How long did he remain at Ojo del Apache?
A. About 10 or 11 years.
86 Q. After what date?
A. After 1840.

Q. Were you acquainted with Damasio Salazar?
A. Yes.
Q. Did you know him about the year '42?

Mr. POPE: We object, as it is leading.

A. Yes.
Q. Where did he reside about the year '42?
A. He lived in the Pecos rivera place around Fragua.
Q. How far from the place Ojo del Apache?
A. About 12 or 15 miles.
Q. Do you know if he had any official position in the year '42?
A. Yes.
Q. What position was it, if you know?
A. He had two; he was judge and captain of militia.
Q. What kind of a judge was he; what was he called?
A. Constitutional judge.
Q. Of what place?
A. At the place El Bado.
Q. What is the full name of the place El Bado?
A. At that time they called it El Bado; now San Miguel.
Q. Was it not called San Miguel del Bado?

Mr. POPE: We object, as it is leading.

A. Yes.
Q. How was that place designated as being a demarcation?
A. The demarcation of El Bado.
Q. And Salazar was justice of that demarcation?

Mr. POPE: We object, as it is leading.

A. Yes.
Q. Did you ever see him write?
A. I saw him write; he wrote very bad.
Q. Would you recognize his signature if you saw it?
A. It is possible that I would.
Q. Look at the name Damasio Salazar and see if you have ever seen that signature before. (Hands witness paper.)
A. That is the signature of Donacio Salazar, and his secretary, Rafael Aragon, has also signed it.
Q. Did you ever see Rafael Aragon sign his name?
A. He was my teacher long time ago.
Q. How frequently have you seen Rafael Aragon write?
A. Many times; I was his disciple; innumerable.

87 Q. State, if you know, whose signature is the name of Rafael Aragon signed to this paper which has been shown you.
A. That is the one of Rafale Aragon (pointing).
Q. Did you know Rafael Aragon in the year '42?
A. Yes.
Q. Where did he reside in the year '42?
A. On the Rio Puerco, at a place called Puertocito.
Q. How far from the house of Damasio Salazar did he reside?
A. About one and a half miles.

Q. Did he have any official relations with Damasio Salazar, if you know?

A. Yes; he was the secretary of Damasio Salazar.

Q. Secretary of Salazar in what capacity?

A. He was justice alcalde.

Q. He was secretary in his alcalde's court?

A. Yes.

Q. Do you know Salvador Gonzales?

A. Yes.

Q. Did you know him in the year '42?

A. Yes.

Q. Did you ever see him write his name?

A. No; I do not remember. I knew him well, but I do not remember having seen him write.

Q. Where was Salvador Gonzales living in '42?

A. In San Miguel.

Q. How far from the house of Damasio Salazar?

A. About 6 miles.

Q. Do you know the property called Ojo del Apache, the property in this case?

A. Yes; I knew it.

Q. State whether or not you know anything about the property having been placed in the possession of Ventura Trujillo by Damasio Salazar. If so, state what you know about it.

Mr. POPE: We object as leading.

A. Yes. When Juan Bautista Lucero bought from the heirs of Antonuo Trujillo they showed me a title that Damasio Salazar had given to Trujillo by order of Manuel Armijo.

Mr. POPE: Object to the last part as hearsay.

Q. When was that?

A. '54 or '55.

Q. Would you recognize that paper now?

A. It is possible I would.

Q. Look at this paper and see if it is the same one or not. (Marked Plaintiff's Exhibit "A.")

A. I believe this is the paper. I think this is the paper.

88 Q. Were you ever present at any time when Damasio Salazar gave possession of that tract of land to Ventura Trujillo?

Mr. POPE: Object, as it is leading.

A. No; I was not present.

Q. Do you know what the boundaries of the tract of land called the Ojo del Apache are?

A. Yes.

Q. State the boundaries if you know them.

A. On the north, a mesa—a big rock on the mesa; on the east, to the Puertocito of the valley Redonda de la Lagunita, and on the south, the mesa of the Cañon de la Lagunita: from there southeast is the old road of the traders with the Comanches; then from the

southeast to the north the Cerrito of a high mesa until it connects with the beginning.

Q. Has that mesa on the north any name?

A. The Mesa Ojo del Apache.

Q. What is the Ojo del Apache?

A. It is a spring at that ranch that is called Ojo del Apache.

Q. Is this mesa on the north of this spring?

A. The mesa is to the north of the ranch.

Q. Is it the first mesa to the north?

A. Yes.

Q. Did you know at that time a road which went to Chupainas?

A. Yes; I knew it.

Q. Where was that road, if you know, in regard to the spring called the Ojo del Apache?

A. It is the old road of the Comanche traders which comes down to Los Chupainas.

Q. Which direction is it from the spring?

A. It is to the south of the spr-ng.

Q. Do you know a mesa call- the Mesa Chupainas?

A. Yes: from where the mesa of the Apaches ends the mesa of the Chupainas commences; it is lower, but it is a continuation of the higher mesa.

Q. What direction is the Mesa Chupainas from the Apache spring?

A. Between the south and east.

Q. Do you know the Cañon de la Lagunita?

A. Yes.

Q. Do you know the hills which border on the Cañon Lagunita?

A. Yes; that is where the boundary goes.

Q. Which direction are the hills which border on the Cañon de la Lagunita from the Apache spring?

A. West.

89 Q. How long have you known this tract of land?

A. I was born there, and I live there now.

Q. Do you live within the tract of land or merely close to it?

A. I lived near it very many years, and I live near it now; I live nearly above.

Q. You said Ventura Trujillo occupied — for about 10 or 11 years?

A. Yes.

Q. How did he occupy it?

A. Something like that; he lived there; he had this ranch, as I have stated.

Q. What family, if you know, did he have with him?

A. He had a family; sons; also women.

Q. Were there any other settlements in that vicinity?

A. A little below from there; at Lagunita.

Q. During the time that Ventura Trujillo lived on this property, state whether anybody else, if you know, claimed to own or possess the property besides Ventura Trujillo, possessed under him, or any part of it?

Mr. POPE: Object to it as hearsay, immaterial, and incompetent and irrelevant.

A. During the time Ventura Trujillo occupied it I did not hear of anybody claiming it.

Q. While Ventura Trujillo was occupying it how was it respected and regarded by the people in that section of the country?

Mr. POPE: Object on the same grounds.

A. They respected it as the judicial possession of Ventura Trujillo.

Q. How was it regarded as to its being owned by him?

Mr. POPE: Object on the same grounds and leading.

A. As having been granted to him by Governor Armijo.

Mr. POPE: We ask to strike out the last answer as not being responsive to Mr. Catron's question.

Q. As having been granted by Armijo and Salazar?

Mr. POPE: Object to it on the same grounds, and move to strike it out, and leading.

A. Yes; because he lived there.

Q. Did you know Juan Bautista Lucero?

A. Yes.

Q. Is he living or dead?

A. Dead.

90 Q. Did you know Rafael Aragon?

A. Yes.

Q. Is he living or dead?

A. He is dead.

Q. How long prior to this have they been dead?

A. Rafael Aragon has been dead about 8 years and Juan Bautista Lucero about 4 years; he was an uncle of mine.

Q. Did you know Guadalupe Miranda?

A. No.

Q. Did you have any knowledge as to there being a grant of land at that place to Ventura Trujillo at that time?

Mr. POPE: Object on the same grounds.

A. Yes.

Q. What was your knowledge?

A. I knew that Damasio Salazar had given it to Ventura Trujillo.

Q. How did you obtain that knowledge?

A. I lived there; my father said so, and everybody said so, and that is the way I knew it.

Q. Did you at any time propose to settle on that property yourself?

Mr. POPE: Object as immaterial.

A. No; I lived at Lagunita, right near.

Q. Did you have any intention of settling upon it?

A. Yes; I had.

Q. What was the reason you did not settle on it?

Mr. POPE: Object as immaterial, incompetent, and hearsay as to his reasons for not going there.

A. I respected it because it belonged to somebody else. I knew it belonged to somebody else.

Q. Did you know who it belonged to?

Mr. POPE: Object for the same reasons.

A. To Ventura Trujillo.

Q. That is all.

Cross-examination by Mr. POPE:

Q. You know that Damasio Salazar had given Ventura Trujillo this land, did you?

A. Yes.

Q. How old did you say you was?

A. 63 years old.

Q. Where did you say you were born?

A. At La Fragua, where Salazar lived.

Q. How far is that from Ojo del Apache?

A. About 12 or 15 miles.

Q. That is within the boundaries you have just mentioned, is it?

A. La Fragua is here at the Rio Pecos, and the boundaries are beyond the Lagunita.

91 Q. Which side of Lagunita is it—east or west?

A. To the east.

Q. What direction is La Fragua from Ojo del Apache?

A. To the west.

Q. How far is San Miguel del Bado from La Fragua from the town plaza of San Miguel?

A. About 6 miles.

Q. What direction is it from San Miguel?

A. South.

Q. How far is La Fragua from Anton Chico?

A. 12 or 15 miles.

Q. What direction is La Fragua from Anton Chico?

A. It is between east and north; going from La Fragua to Anton Chico we go southeast.

Q. Is this La Fragua within the boundaries you have mentioned?

A. No; they are somewhere far from there.

Q. Is that where you lived when you were a boy?

A. Yes; when I was small. My father lived there when I was 6 years old.

Q. That is where Damasio Salazar lived, is it?

A. He lived at La Fragua.

Q. How long did he live at La Fragua?

A. Many years.

Q. Is that where he lived until he died?

A. No; he died at Sapello, on the other side. He lived there afterwards.

Q. Did he ever live on this Ojo del Apache tract you have mentioned?

A. I never saw him.

Q. Where did Ventura Trujillo live?

A. When I knew him he was living at Ojo del Apache.

Q. How old were you when you first knew him?

A. 6 years.

Q. What year was that?

A. In 1840.

Q. He was living at Ojo del Apache then?

A. Yes.

Q. How long did Ventura Trujillo live there?

A. He lived there about 10 or 11 years; I do not remember.

Q. In 1840 you knew him first?

A. In 1840, I knew him then.

Q. Was he claiming this Ojo del Apache then?

A. Yes.

Q. And he continued to claim it as his from then on, did he?

A. He lived there.

Q. He was claiming it under this right that he had when you first knew him, was he?

A. Yes.

Q. When you first knew him in 1840?

A. Yes.

Q. How long since you have seen any handwriting of Damasio Salazar?

A. Not very long; 25 or 26 years.

Q. 25 or 26 years since you have seen any handwriting of Damasio Salazar?

92 A. Yes; I have seen it since.

Q. How long was it before that that you ever saw any handwriting of Damasio Salazar?

A. I had seen it all the time.

Q. How did you happen to see it all the time?

A. He was at La Fragua; he was my teacher; we were together all the time.

Q. You do not know Damasio Salazar's handwriting very well, do you?

A. I knew it quite well.

Q. He did not write much; he had a secretary to do his writing.

A. He wrote very bad.

Q. And he wrote very little?

A. Yes; he only wrote his name.

Q. You never saw this paper before, did you (Plaintiff's Exhibit "A")?

A. Yes; I have seen it.

Q. How many times before have you seen it?

A. This paper I have seen once or twice.

Q. You never examined it closely when you saw it, did you?

A. Yes; I examined it well.

Q. How did you examine it well? You did not have any interest in this property?

A. Because the title belonged to an uncle of mine when he bought from Ventura Trujillo, Bautista Lucero, on my mother's side.

A. Bautista Lucero was an uncle of yours?

A. He was an uncle on my mother's side.

Q. And he claimed this property at one time?

A. Bautista Lucero bought it from the heirs of Ventura Trujillo.

Q. You claim an interest in this property, don't you?

A. No.

Q. Where do you say you live now?

A. At Anton Chico.

Q. That is not on the grant?

A. No; it is far from there.

Q. How long since you have seen the handwriting of Rafael Aragon?

A. I see it every day; it appears in the papers I have at my house.

Q. Where did Ventura Trujillo go when he left Ojo del Apache?

A. I believe he went to Tecolote or San Miguel. I am not quite sure.

Q. That is not on this grant, is it?

A. No.

Q. He lived at Tecolote until he died, did he?

A. At Tecolote or San Miguel. I do not know where he died.

Q. He never came back to this grant after he left it?

A. No.

93 Q. How many people are living in these boundaries you have mentioned now?

A. I see some farmers there.

Q. Any settlements on the grant now?

A. Antonio Salona and two or three neighbors of his and one or two Americans.

Q. Antonio Solano is living on this grant, is he?

A. He lives there, yes.

Q. He has a patent for the land from the Government, has he?

A. I do not know.

Q. Do you know Pablo Lucero?

A. Yes.

Q. He is living on this grant?

A. Yes.

Q. Do you know Antonio Lucero?

A. Yes.

Q. He lives in the grant?

A. No; they live at Los Chupaderos.

Q. How far is that from the boundaries of the grant?

A. About 2 miles and a half.

Q. From where?

A. From the Los Chupaderos.

Q. How far is it from the Ojo del Apache to the Los Chupaderos?

A. It is about five miles.
Q. Do you know Bonifacio Lucero?
A. I do not know him; he must be a young man.
Q. Do you know Francisco Lopez?
A. Yes; he is dead.
Q. Where did he live?
A. At Lagunitas.
Q. That is within this grant, is it?
A. It is outside of Ojo del Apache.
Q. Do you know Andres Lucero?
A. I do not know whether there is another Andres Lucero—yes, I know him; he is a musician.
Q. Where does he live?
A. He lived with the deceased Francisco Lopez; he used to live at Lagunitas.
Q. That is not on this grant, is it?
A. It is not within the boundaries of the Apache grant.
Q. Do you know Casamero Trembole?
A. Yes.
Q. He has lands right the-e near the Ojo del Apache?
A. He has a little ranch on the outside of the road of the Comanche traders, a little to the outside.
Q. Is it not on both sides of the road, or on one side?
A. I saw his ranch on the south side of the road and inside of the boundary of the Ojo del Apache; it is called Toupe.
94 Q. Who lives at this little town?
A. Some families—two or three families; their names are Montoyas.
Q. Mr. Trembole's ranch is at Ojo del Apache, is it?
A. I see the boundary on the outside of the road of the Comanche traders.
Q. Do you know a party named Domingo Hays?
A. Yes.
Q. Where does he live?
A. At La Apache.
Q. Is that at the spring?
A. Yes; at Ojo del Apache.
Q. That is within the grant, is it?
A. Yes; his house is at Ojo del Apache.
Q. Is he related to Mr. May Hayes?
A. Yes; he is related to him.
Q. How is he related to him?
A. I am not quite sure, but I think he is the son of his wife; he must be either nephew or son-in-law.
Q. Do you know Hubert Hilgres?
A. I may know him a little.
Q. Do you know where he lives?
A. I do not know.
Q. Where does he live?
A. He lives at Las Vegas or somewhere else.
Q. Has he lands at Ojo del Apache?

A. I do not know.

Q. He is related to Mr. Hays, is he?

A. He is related to him in the same way Domingo is. He and Domingo are brothers.

Q. Do you know a man named John C. Adlon?

A. I think not.

Q. Do you know Emma Adlon?

A. No.

Q. Do you know any lands around there claimed as the Adlon lands?

A. No; may be those Americans who live below; I do not know. A party of Americans live on the south of Ojo del Apache—one or two. There is a fence there and a windmill to get water with.

Q. Do they live north or south of the old road of the Comanche traders?

A. They live to the north of the road of the Comanche traders.

Q. They live inside of this grant?

A. Yes.

Q. They claim under the Government, don't they?

A. I do not know; it don't belong to the Government.

Q. Did you know Governor Armijo?

A. Yes.

Q. Did you ever see him?

A. Yes; on several occasions.

Q. You never saw any order that Governor Armijo ever made about this grant?

A. No.

Q. You do not know of your own knowledge whether he ever made any order about it, do you?

A. It is stated by everybody; I never saw it.

95 Q. Ventura Trujillo claimed that when you first knew him, did he?

A. Yes.

Q. He was the man that claimed to own this grant?

A. Yes.

Q. Did you get that impression from what Ventura Trujillo said to you?

A. Yes; and from what everybody said, and I saw him living there.

Q. That is all you know about what Governor Amijo did?

A. That is all I know about it.

Q. That is all.

Redirect examination by Mr. CATRON:

Q. When Bautista Lucero bought the grant from the heirs of Ventura Trujillo what did he do with it?

A. He sold it to Mr. Taylor.

Q. Between the time he bought it and when he sold it to Taylor what did he do with it?

A. He lived upon it; he built a house there.

Q. How did he occupy it and with what?

Mr. POPE: Object as leading.

A. He moved there with his family and enlarged the house built by Ventura Trujillo.

Q. What did he do by way of occupying it, keeping it?

A. He bought it.

Q. What use did he make of the property?

A. He sold it afterwards to Taylor.

Q. What use did he make of it while he lived there?

A. He lived there and planted the same places of land Trujillo had; he had goats and stock there.

Q. What did he do with his stock that he had there—how did he manage them?

A. I do not know.

Q. Did he keep them up or graze them out on the property?

A. Yes; he pastured them on the property.

Q. To what limits did he pasture them?

A. Within the property; it is very large.

Q. How close did he go out to the boundaries?

A. I saw him all the time within the boundaries.

Q. Always in one or different places?

A. On different points of the grant or different sites and in every direction, on every side.

Q. How many animals did he have?

A. I do not know.

Q. How long did he occupy the land from the time he purchased it until he turned it over to Taylor?

96 A. Nearly 9 or 10 years; maybe a little less. I do not remember.

Q. What was Taylor's first name?

A. I do not know. I knew him as Mr. Taylor.

Q. When he sold to Taylor what did Taylor do with the property?

A. He sold it to Mr. Hays.

Q. Before he sold it to Hays, what did he do with it?

A. He lived on it.

Q. How long did he live on the property before he sold it to Mr. Hays?

A. Nearly 9 or 10 years.

Q. What use did he make of it besides living on it?

A. He had stock; he had wagons and oxen; he had a trail of wagons.

Q. During the time Juan Bautista Lucero lived on the property and occupied it, did anybody else live on it and occupy it?

A. He was a relative of his. Francisco and Pablo was with him; he was also my uncle on my mother's side.

Q. Was there anybody else living on it and using it then?

A. I do not know.

Q. During the time that Mr. Taylor occupied and lived on the property did any one else besides Mr. Taylor occupy it?

A. No; those who lived on it left it.

Q. To what extent did Taylor occupy the property outside of the house right where he lived?

A. He had a great deal of stock.

Q. Where did he pasture his stock?

A. He pastured where Salona lives now; he pastured where these Americans live now and he pastured towards the mesa and everywhere.

Q. Did he pasture it all over the boundaries inside of the land or not?

A. I have seen his stock in all the grant.

Q. Do you know what year Mr. Taylor sold the property to Mr. Hays?

A. Yes.

Q. In what year?

A. I do not know, but Mr. Hays has been there for many years.

Q. After Taylor sold to Hays, what did Hays do with the property?

A. He lives on it now.

Q. What did Hays do with the property after he bought it?

A. I saw a great deal of his stock and sheep and I saw his horses and cattle and his furniture.

97 Q. When did his family first go there?

A. Since he bought from Mr. Taylor.

Q. When Mr. Hays bought where did Taylor move after that?

A. He has a house in Las Vegas.

Q. How has Mr. Hays occupied the property?

A. That way as having bought it from Mr. Taylor.

Q. After Juan Bautista Lucero bought from Ventura Trujillo how was the property regarded and respected as to ownership by the people generally?

Mr. POPE: Object as immaterial, irrelevant, and improper method of proving title.

A. It was regarded and respected as the property of Juan Bautista Lucero.

Q. After Lucero sold to Taylor and Taylor went to occupy it, how was the title respected?

A. With respect, a great deal more than as belonging to Mr. Taylor; sometimes he would not allow us to water there.

Q. After Taylor sold it to Hays how was it regarded and respected—the title?

A. As of Mr. Hays.

Q. That is all.

Cross-examination by Mr. POPE:

Q. How long is this grant from north to south—this tract of land?

A. I think it is about 6 miles and more along the mesa—must be about 7 or 8 miles.

Q. How long on the east boundary of this tract—its widest point from east to west?

A. It is about five miles at its widest point.

Q. The people that had cattle there used to graze them all around on the tract, didn't they?

A. Yes; from the mesa.

Q. The mesa is on the grant, is it?

A. It is the boundary of the grant; the boundary is on the top of the mesa.

Q. And these cattle used to graze both at the top of the mesa and on each side of the mesa and all around there over the grant?

A. I saw them pasture within the grant on the side of the mesa; it may be they went on top; I do not know.

Q. You have seen them on the top of the mesa?

A. I never saw them there.

Q. The people pastured their sheep and stock all around there without respect to whether they are on the grant, don't they?

A. I do not know. I used to go over there with my wagons, and I stopped and slept, and then I kept on.

98 Q. Those people at Lagunitas, how long have they been living there?

A. Since 1839. Damasio Salazar also gave them land.

Q. Is that within this grant?

A. No; it is outside of the Ojo del Apache grant.

Q. What people are inside of the Ojo del Apache grant?

A. Antonio Salona and two or three neighbors; some Americans who live below—I do not know them—and two or three families at Toupe.

Q. How long have those people been living there?

A. A great deal of time. Antonio Solano has lived there about 7 or 8 years.

Q. That is inside of the grant, is it?

A. Yes.

Q. Those people are not related to Mr. Hays, are they?

A. I believe not.

Q. They do not hold land by purchase from Mr. Hays, do they?

A. No; I believe not; I do not know.

Q. Some of them have been living there for a great many years, have they not?

A. About 7 or 8 years Solano has lived there.

Q. Others live there near, do they?

A. Yes; at Jouspa.

Q. That is inside of the grant, is it?

A. Yes.

Q. How long have they been living there?

A. They have lived there about 25 or 30 years.

Q. They do not claim that grant by purchase from Mr. Hays or any one else, do they?

A. I do not know how they claim.

Q. The people of Lagunita have been living there for a great many years?

A. Since 1839.
Q. Dionacio Salazar gave them their land, did he?
A. Yes.
Q. I believe you said that was the year before you knew Ventura Trujillo?
A. Yes.
Q. That is all.

ENCARNACION LOPEZ, a witness of lawful age, being produced, sworn, and examined on the part of the plaintiffs, testified, upon direct examination by Mr. Catron, as follows:

Q. State your name, age, and residence.
A. My name is Encarnacion Lopez; I was born in 1828; I live at San Geronimo.
Q. Are you acquainted with the property called the Ojo del Apache grant?
A. Yes.
99 Q. How long have you known that property?
A. I know it since it was delivered to the deceased, Ventura Trujillo, in '42.
Q. Who delivered it to him?
A. Don Damasio Salazar, and Don Rafael Aragon, who was his secretary.
Q. Where were you when that was delivered to them?
A. I was at that place herding sheep.
Q. For whom?
A. Of my father, Don Manuel Pino.
Q. Did you or did you not see Damasio Salazar and Rafael Aragon and Ventura Trujillo at the time the property was delivered?

Mr. PORR: Object as leading.

A. Yes; they were at our camp then.
Q. What boundaries were delivered, if you know?
A. On that side, the north of the mesa, where there is a spring called Ojo del Ojito, at the point of the mesa towards the west where the sun rises; from the point of the mesa to the Lagunita, where there are some mesas on the other side of the arroyo to where the mesas join the road of the Comanche traders—that is, the boundary on the south.
Q. On the west where the sun sets?
A. The mesa of the valley of the Redondo on this side where the mouth of the cañon cito, where the road, the old road, joins.
Q. What was the boundary on the north side?
A. The point of the mesa of the Ojito Seco from the mesa to the valley of the Redondo.
Q. If you know or if it was stated at the time by them by what authority did Damasio Salazar deliver the possession?

Mr. PORR: Object as leading and suggests the answer.

A. By the order of General Arnijo to Damasio Salazar to deliver to him.

Q. How do you know that he gave that order?

A. Because that is stated. I did not see it myself.

Q. Who stated that he gave that order?

A. Don Rafael Aragon and Don Dionacio Salazar and the deceased, Ventura Trujillo; every one of them so stated.

Q. After the property was delivered to Don Ventura Trujillo what did Don Ventura Trujillo do with it?

A. He lived on that place while I was herding his sheep.

Q. How long did he live there, if you know?

100 A. I was with him five years and a little over.

Q. What did Ventura Trujillo have there on the property, if you know?

A. He had his stock, horses, goats; he planted on that place.

Q. How many goats did he have?

A. I do not know how many, but he had a large heard of goats; I do not know the number.

Q. How many horses did he have?

A. He had quite a number; about 15 or 20 horses; he was very fond of travelling.

Q. Had he any cows or cattle on that property?

A. When I was there I did not see any cattle.

Q. Where did he pasture these goats and horses?

A. Within his place.

Q. How far out towards the boundaries?

A. I do not know if his horses went outside of the boundaries or not.

Q. During the time that you were there and saw him occupy it, was there anybody else occupying or claiming any part of that property?

A. No.

Q. How was that property respected and regarded as to ownership by the people in that vicinity and neighborhood during that time that Ventura Trujillo was there and occupying it?

Mr. POPE: Object as hearsay.

A. It was respected as belonging to the deceased Ventura Trujillo.

Q. Who claimed to be the owner of the property?

Mr. POPE: Object for the same reasons.

A. Nobody; I never heard of anybody else.

Q. Did Ventura Trujillo claim it?

A. It was recognized as his.

Q. Did he claim it or not?

A. Yes; he possessed it.

Q. When you left there who was in the possession of the property?

A. He.

Q. Since you went away from there have you seen that property?

A. Yes; I went there afterwards.

Q. How soon afterwards was it that you went to the property the first time?

A. I do not remember very well, but 3 or 5 or 6 years; something like that.

Q. When you went back to the property who, if any one, was in possession of it?

A. I did not go to the house; I do not know whether his children or nephews, but some possessed it for a good deal of time afterwards.

Q. Do you know if anybody else after Ventura Trujillo succeeded to the possession of that property after Ventura Trujillo?

101 A. After he died I knew the people who lived on it.

Q. Who was there after his death?

A. Bautista Lucero and Crescencio Baca, deceased.

Q. Were you there while they were in the possession of the property?

A. I was there upon occasions at that house with them.

Q. What claim, if any, did they make to the property?

Mr. POPE: Object for the same reasons.

A. They said that they had bought from the heirs, but I do not know.

Q. They claimed the property by purchase?

Mr. POPE: Object as leading.

A. Yes; they recognized it as belonging to them by purchase.

Q. Now, what were they doing with the property when you were there?

A. I saw them in possession. They were living on it and they were planting there.

Q. Did they have any animals or stock?

A. They had a few goats. I did not see any other kind of stock.

Q. Did you go around over the property when you were back that time to see?

A. I went over to Las Vegas and on my return they had a house.

Q. Did you stop in that house?

A. Yes.

Q. You did not see what they had outside of the road at the house?

A. They had planted there then corn and beans and a garden and chili and onions and also canteloupes.

Q. Do you know how they occupied that portion of the property that was some distance from their house?

Mr. POPE: Object as leading and hearsay.

A. They said that they had bought from the heirs. I did not see that, but they said they had possession as coming from the heirs.

Q. Do you know how to read and write?
A. No.
Q. That is all.

Cross-examination by Mr. Pope:

Q. Where were you living at the time you were herding sheep on this property?
A. At that time I lived in the Cañon Jemez. After I delivered the sheep I came to live at Anton Chico.
Q. How did it happen you were herding sheep way over here?
102 A. Because the Navajos were very numerous and all the stock at that time were brought to this side. We herded wherever we could save our stock; we pastured them.
Q. That is the general custom among herders now, is it?
A. Yes; I believe so; there is danger of Indians, but they go wherever they can save their stock.
Q. Did you ever herd sheep there after that?
A. Yes; many times.
Q. Around the Ojo del Apache spring?
A. Yes; everywhere else he allowed us to pasture except right at the spring.
Q. On what part of this tract were you herding when these three men came out there?
A. Within that place, and also outside of it.
Q. Where were you herding on this grant with reference to the Apache spring when those three men came there in 1842?
A. I was inside of the place of the deceased, Ventura Trujillo.
Q. How far from the spring?
A. We were right at the edge of the spring or cojita.
Q. You did not see any of the papers these men had?
A. No; I did not; I was still a boy; I did not see them.
Q. You did not see any papers?
A. I did not see any papers; they had the papers with them; I did not see them; I saw the three of them.
Q. How did you know what the boundaries were; you did not go with them?
A. Because they stated the boundaries; because they said they were the boundaries; that is the reason that I know them.
Q. How did they come to state it?
A. Because Ventura Trujillo made a petition for a piece of land, and they said that they had an order from him to that effect.
Q. You did not go with them around these boundaries, did you?
A. No; they stated the lines that they had.
Q. Did they do anything else?
A. I do not know, but the lines are very well known.
Q. Did they do anything else when they came, these three men?
A. No; I did not see them do anything else.
Q. All you know about it is what they said?
A. Yes; I saw them there.

Redirect examination by Mr. CATRON:

Q. Do you know whether Damasio Salazar and Rafael
103 Aragon made any report to the governor after their action in delivering the possession?

Mr. POPE: We object, as it is improper, impertinent, irrelevant, incompetent, and hearsay; statements of what other people told him.

A. I understand that they had given him a list, but I did not see it myself.

Mr. POPE: We move to strike out that answer as to what was told him, and we also reserve the right to further cross-examine this witness if on investigation the Government considers it desirable.

JOSE BENITO MARTINEZ, a witness of lawful age, being produced, sworn, and examined on the part of the plaintiffs, testified, upon direct examination by Mr. Catron, as follows:

Q. State your name, age, and residence.

A. My name is Jose Benito Martinez; I am 53 years old; I live at Anton Chico.

Q. Did you know Ventura Trujillo in his lifetime?

A. No.

Q. Did you know Juan Bautista Lucero?

A. Yes.

Q. Do you know the property in question here called the Ojo del Apache land grant or tract?

A. Yes.

Q. When did you first know that property?

A. In 1854.

Q. Who was in possession of it at that time, if any one, to your knowledge?

A. To my knowledge, the wife of Ventura Trujillo, deceased.

Q. How was she occupying it, if you know?

A. She had it loaned to Juan Bautista Lucero and to my uncle, Cresencio Baca.

Q. Was she there or were they there?

A. The widow of Ventura Trujillo, Juan Lucero, and Cresencio Baca were there.

Q. That was in 1854?

A. 1854 or 1855.

Q. How long did they stay on that property, if you know?

A. About 8 or 9 years, perhaps.

Q. Did they occupy the property long after they acquired title to it?

A. A man by the name of Lopez came to see the property by order of the woman.

Q. Where were these men living, Baca and Lucero, at that time?

A. At the Apache spring.

Mr. POPE: Object as leading and move to strike it out.

Q. While they were there did they occupy it 8 or 9 years as their property or as the property of the widow?

104 A. In about 1855 this Isidro Lopez went there to see some stock that they had there. I was then herding goats there with my uncle Cresencio and a brother of mine was cutting timber in the canoncito. Then this Isidro came and my uncle Cresencio told him that the boy was cutting timber there. Then Isidro told me to go and tell my father not to cut timber there. I went at night and came back the next day and I told him that my father said that the timber was already cut and wanted to know what he should do with it. Isidro said to bring the timber and cut no more. That is the way I came to know that it belonged to that woman.

Mr. POPE: We object to this as being incompetent and hearsay.

Q. Now, where was the place this timber was cut—within or without this grant?

A. It was within this grant.

Q. Who did they claim that grant belonged to at that time?

Mr. POPE: Object as leading.

A. To Ventura Trujillo, deceased.

Q. Was his widow living at that time?

A. Yes.

Q. Where was she?

A. She was at her house; I do not know whether at San Miguel or Tecolote.

Q. Who were these two people that were there in possession at that time?

A. Cresencio, my uncle, and Juan Bautista Lucero.

Q. What was your uncle's other name?

A. Cresencio Baca.

Q. Who was Isidro Lopesz, the man you have mentioned?

A. He was son-in-law of Ventura Trujillo, deceased, and son of that woman.

Q. Did you ever see the property after that time?

A. All the time from the year '54 until now.

Q. Did Juan Bautista Lucero and Cresencio Baca at any time cultivate that property as their own, to your knowledge?

A. They bought it in the year '65.

Q. In what year did they buy it?

A. '65.

Q. Who did they buy it from?

A. In the year '55.

Mr. POPE: We object, as it is not the best evidence.

Q. From whom did they buy it?

A. They bought it from Juna Lopez, a son of that woman.

Q. After they bought it how long did they remain in possession of it?

A. About 8 or 9 years.

Q. How did they occupy it?

A. My uncle Cresencio had a little store there.

105 Q. Did they live there?

A. They had some planting done there and gardens and orchards.

Q. Did they or not live on it?

A. They lived there; also their families.

Mr. POPE: Object as leading.

Q. Had they any animals or live stock?

A. No; they did not have any stock. My uncle Cresencio had a few goats there.

Q. Who succeeded them in possession of the property, if you know?

A. Mr. Taylor.

Q. What was his first name, if you know?

A. John Taylor.

Q. How did he occupy the property?

A. He bought it from Juan Bautista Lucero.

Q. How long did he occupy it and in what manner did he use it, Mr. Taylor?

A. He had a station there. He had wagons. He was using it as a station.

Q. Did he have any animals or live stock there?

A. He had wagons and cattle and horses and oxen.

Q. Where did he pasture them?

A. Within the same place.

Q. During the time that Juan Bautista Lucero and Cresencio Baca occupied the property how was it regarded and respected by the people generally in that locality as to ownership?

Mr. POPE: Object as immaterial and hearsay.

A. They were recognized and respected as the owners of the land.

Q. After Mr. Taylor bought it and went into possession and occupied it, how was it regarded by the people in that locality?

Mr. POPE: Same objections.

A. They respected the same way as belonging to Mr. Taylor.

Q. That is all.

Cross-examination by Mr. POPE:

Q. Does Mr. Taylor claim the whole of this tract of land that you have described, or only a ranch on the inside?

A. He claims all of the land.

Q. Are you interested in this grant?

A. No, sir; I never was. I only have worked in their house.

Q. Wo-ked for whom?

A. Mr. Taylor.

Q. Have you worked for the plaintiff in t-is case, Mr. Hays?

A. No; I sheared down sheep for him at one time. That is all I worked for him.

106 Q. You have herded sheep for him occasionally?
A. Never.
Q. You sheared sheep for him occasionally?
A. I used to work in the house.
Q. Have you sheared sheep for Mr. Hays occasionally?
A. Yes, sir; sheep and goats.
Q. That is all.

Mr. CATRON: That is all.

ENCARNACIO N. LOPEZ recalled for further cross-examination by Mr. Pope:

Q. Do you claim any interest in this grant?
A. No, sir.
Q. How far do you live from the Ojo del Apache now?
A. I live far; I live at the valley of San Geronimo.
Q. How many miles is that?
A. I do not know how many miles it is. It is far.
Q. Are you related to Mr. Hays or his wife of any of his family?
A. No, sir.

August 24th, 1896.—The further hearing of the testimony of witnesses in the above-entitled cause was resumed before Fuller, A. J., and the same attorneys present.

FRANCISCO TRUJILLO, a witness of lawful age, being produced, sworn, and examined on the part of the plaintiffs, testified on direct examination by Mr. Catron as follows:

Q. State your name, age, and residence.
A. My name is Francisco Trujillo; I was born in the year '20; I reside at Valle de San Geronimo, San Miguel county, New Mexico.
Q. In what month, if you know, were you born in 1820?
A. I was very young and I do not know what time.
Q. Are you acquainted with the tract of land in the county of San Miguel, in this Territory, known as the Ojo del Apache tract?
A. Yes.
Q. How long have you known that tract of land?
A. I have known it since the year '30, when my father, Ventura Trujillo, was living on it?
Q. Were you acquainted with Ventura Trujillo?
A. He was my father.
Q. Do you know anything about a grant being made of that tract of land to your father, Ventura Trujillo, about the year '40 or '42?
A. Yes.
Q. State what you know about it.
A. I know about that that my father, Ventura Trujillo, had brought a very rich woman from the Comanches.
Q. Well, now, go on and state what you know about it.
107 A. And then after that the Mexican government made this grant to my father, and then there was an order signed by the government with a man to go and deliver the land to my father.

Q. Do you know who signed that order?
A. Yes.
Q. Who?
A. This order was signed by General Armijo and declared Damasio Salazar to go and deliver the land.
Q. What year was the land delivered?
A. The land was delivered in the year '42.
Q. By whom?
A. It was delivered by Don Damasio Salazar and Don Rafael Aragon, his secretary; at the time I was very young then.
Q. Were you acquainted with Damasio Salazar?
A. Yes, I knew him.
Q. You say that Rafael Aragon was his secretary?
A. He was his secretary.
Q. In what capacity?
A. He was his secretary, so they said; I was never in his court.
Q. You were present at the time the delivery was made?
A. Yes, I was there; when the land was delivered to my father a communication was signed stating that it had been delivered.
Q. Who signed that communication?
A. Don Damasio Salazar.
Q. At the time the land was delivered who was present, if you know?
A. My brothers and my father.
Q. Rafael Aragon there?
A. Yes.
Q. Damasio Salazar?
A. Yes.
Q. Did you know Salvador Gonzales?
A. No.
Q. Do you know how to read and write?
A. No.
Q. What were the boundaries which were delivered of the possession of that land?
A. The point of the Mesa de los Salonas, as it is called, to the mesa alto of the Lagunita; from there to the Polvaredo del Valles Redondo; from that point to the canoncito that empties out into the Lagunita; the old road of the Comanche traders to the Mesa de los Chupaderos.
Q. Do you know what is called the Apache spring?
A. Yes.
Q. Where is that in regard to this property, within or without it?
A. What property?
Q. This grant which was delivered to your father by Damasio Salazar.
108 A. It is outside of the grant.
Q. You say the Apache spring is outside of the grant?
A. Yes.
Q. What do you mean by saying it is outside of the grant?
A. I think it is three miles from the grant.
Q. Is it within the boundaries you have mentioned or not?

Mr. POPE: We object on the ground that the witness has already answered the question and he is cross-examining his own witness.

A. It is within the boundaries.
Q. Do you know where the Ojo del Apache is?
A. Yes; I know it because we had a farm there.
Q. Where did your father reside at the time the grant was made to him?
A. In San Miguel.
Q. Did he ever reside in the grant?

Mr. POPE: We object on the ground that it is leading, and move to strike it out.

A. Yes.
Q. How soon after Damasio Salazar delivered the grant did your father go there to live?

Mr. POPE: We object, as it is leading and suggestive of the answer. He is assuming a state of facts that has not been proven.

A. We lived there about thirty years.
Q. From what time to what time did you live there?
A. I do not know the time that we stayed there, because the Indians drove us away; but my brothers went there to the property.
Q. Is your father living or dead?
A. He is dead.
Q. Where was your father living at the time of his death?
A. In San Miguel.
Q. Where was your mother living when your father died?
A. In San Miguel.
Q. When was it that your father lived on this grant?
A. Prior to his death.
Q. How many years before his death?
A. I have stated that about thirty years.
Q. How long before he died did he go to San Miguel to live?
109 A. I have said that he lived there since he was born.
Q. When did he live on this property?
A. He lived there in the year '42.
Q. How many years after the year '42 did he live there?

Mr. POPE: We object as leading. He has stated already that.

A. We lived there since the grant was made. We transported ourselves immediately there.
Q. You mean to say that as soon as the grant was made you went to Ojo del Apache to live?

Mr. POPE: Object as leading and suggestive of the answer.

A. Yes.
Q. How many years did you stay there after you went there?
A. We stayed there about thirty years.
Q. In what year did your father die?
A. I do not remember; I was very young.

Q. How many years after this grant was made? Was it until your father died?

A. About ten years.

Q. Wh-n your father died who, id any one, was in the possession of this grant?

A. One of my brothers.

Q. What was his name?

A, Isidro Lopez.

Q. In what manner did your father possess the property? How did he occupy it?

A. He had mares and he had a little farm, and he had goats and he made a planting there also.

Q. At what point in the grant was this planting?

A. Near the spring.

Q. The Apache spring?

A. Yes.

Q. Where were these lands that he was cultivating?

A. A little below the Apache spring.

Q. How close to the spring?

A. About 15 yards.

Q. Do you know any mesa that lies to the north of the Ojo del Apache spring?

A. Yes.

Q. State whether or not that is one of the boundaries which was given by Dionacio Salazar?

Mr. POPE: Object as le-ding and suggestive of the answer.

A. That is the mesa alto, as it is called.

Q. Do you know a road on the south of the Apache spring known as the old road to Chupinas?

A. Yes.

Q. Do you know whether or not that road was one of the boundaries which was pointed out by Damasio Salazar?

A. Yes.

Q. Do you know a mesa on the east of the Apache spring called the mesa of Chupinas?

A. Yes.

Q. Do you know whether that was one of the boundaries which was pointed out by Salazar?

Mr. POPE: Object as leading.

A. Yes.

Q. Do you know some hills which border on the Cañon de la Lagunita lying to the west of the Apache spring?

A. Yes.

Q. On the west of the Apache springs?

A. Yes.

Q. State whether or not that was pointed out by Salazar as one of the boundaries of the grant.

Mr. POPE: Object for the same reasons.

A. Yes.

Q. After your father's death you say your brother remained in the possession of the property?

A. Yes.

Q. How long did he stay in possession of the property after your father's death?

A. We remained there about three years.

Q. Were you with him?

A. Yes.

Q. How did you and your brother occupy the property after your father's death?

A. By farming it and with stock.

Q. How many animals had your father on this property from the time Salazar gave him possession of it up to the time of his death?

A. He had about 30 horses, 60 goats, and 6 cows.

Q. Where did he pasture these animals?

A. From the Ojo del Apache towards the hills.

Q. In every direction?

A. In every direction.

Q. How did he pasture them with reference to the boundaries of the grant?

A. Within the boundaries.

Q. How close to the boundaries?

A. The boundaries were very far from the place where he pastured.

Q. Did the animals go out at any times towards the boundaries?

Mr. POPE: Object as leading.

111 A. No; they were all shepherded.

Q. Did the shepherd drive them wherever he wanted to, or did he drive them within any particular place?

A. He drove them wherever he wanted to.

Q. Do you know how this property was repsected and regarded as to ownership after Damasio Salazar gave possession of it to your father as to whom it belonged by the people generally?

A. Yes.

Q. How was it respected, as the property of whom?

A. After my father died it was the property of my brother.

Q. During your father's lifetime as whose property?

A. As my father's.

Q. What became of the property after you and your brother ceased to occupy it?

A. We kept watching it, and we kept going there to live after it went to my brothers.

Q. What did you do with it finally?

A. We again went to live there.

Q. In what year?

A. I do not remember.

Q. How long did you live there that time?

A. We lived there about 14 years.

Q. Who succeeded you in the property, if any one?

A. My brother Isidro, and then it was sold to Luis Sulzbacher.

Q. Did you know Juan Bautista Lucero?
A. Yes.
Q. Did you know Cresencio Baca?
A. Yes.
Q. State whether or not they ever occupied the property.
A. Yes.
Q. From whom did they obtain possession of the property?
A. I think from a brother of ours; I think he had sold to them.
Q. How long did they occupy it?
A. I do not know how long they occupied it; they lived there a long time.
Q. How did they occupy it?
A. They had a farm and animals.
Q. At what particular place did they reside?
A. At the spring itself they had houses there near the springs.
Q. Did they or did they not reside there?
A. Yes.
Q. Had they families?
A. Yes.
Q. You say your brother sold the property; did he sell for all the children or only for himself?

Mr. POPE: Object as it — not the best evidence.

A. He sold it for himself.
112 Q. State whether or not the balance of the children afterwards recognized the sale.

Mr. POPE: Object as leading.

A. Yes.
Q. Do you claim any interest in the property now?
A. Yes.
Q. You claim an interest in the property, or has your interest been sold?
A. No, sir; it has not been sold.
Q. When your brother sold did he sell as representing your mother and the other children?

Mr. POPE: Object, as he says it was sold for himself.

A. No.
Q. Did you see the document that he made?
A. I did not see it.
Q. You approved of whatever he did, did you?

Mr. POPE: Object as leading, and the witness has answered the question.

A. No.
Q. Did you dis-prove it?
A. Yes.
Q. How?

Mr. POPE: We object, as he is cross-examining his own witness.

A. Because he went to sell it without the consent of my mother and the other heirs.

Q. After he sold it to Don Juan Lucero did Lucero take possession of it?

Mr. POPE: Object as leading.

A. Yes.

Q. Did you move away from the property then?

A. Yes.

Q. And your brother went away?

A. Also.

Q. You have never occupied the property since that time?

Mr. POPE: Object, as it is leading.

A. No.

Q. Have you ever commenced any proceeding in court for the possession of the property?

Mr. POPE: Object as immaterial.

A. Yes.

Q. Where?

A. No; I have not myself; I had never been in court before until now.

113 Q. When you moved away from the property after the sale by your brother to Juan Bautista Lucero you recognized that the sale was proper, did you not?

Mr. POPE: Object, as it is leading and suggestive of the answer, and he is cross-examining his own witness and telling him what to say.

A. Yes.

Q. You moved away from the property because you recognized that Juan Bautista Lucero had become the owner of it?

Mr. POPE: Object on the same grounds as last recited.

A. Yes.

Q. After Juan Bautista Lucero was occupying the property you recognized him as the owner of it, did you?

Mr. POPE: Object on the same grounds last stated.

A. Yes.

Q. Do you know to whom Juan Bautista Lucero disposed of the property?

A. I di not.

Q. Do you know John L. Taylor?

A. Yes.

Q. State wherher or not he ever occupied this property.

A. Yes; he occupied it.

Q. Whom did he get it from?

A. I do not remember.

Q. How did he obtain the possession of the property?

A. From this man Juan Lucero, who sold it to him.

Q. Did Juan Lucero turn it over to Taylor?
A. Yes.
Q. How long did Taylor occupy it?
A. I think about five years.
Q. How did he occupy it?
A. He lived there. He was taking some lumber to Redondo.
Q. Lumber from what property?
A. He was taking some lumber to the fort.
Q. Where did he get the lumber?
A. From above the Mesa del Apache.
Q. Within this property or outside of it?
A. Outside of the property.
Q. You say he lived within the property?

Mr. POPE: Object as leading.

A. Yes.
Q. What else did he do inside of the property besides living there, if anything?
A. He had some sheep there.
114 Q. Have any cultivated lands?
A. I do not know.
Q. How many sheep had he?
A. He might have had a thousand sheep.
Q. Where did he pasture them?
A. Upon the same land; he would not go beyond the same land.
Q. Do you mean within the boundaries you have mentioned?
A. Yes.
Q. Who succeeded Mr. Taylor in the possession of the property?
A. After that I saw Mr. Hays there.
Q. The present claimant of the property?
A. Yes.
Q How long has Mr. Hays occupied it, if you know?
A. I do not know how long.
Q. State, if you know, if Taylor, while he was occupying the property, claimed to be the owner of it.

Mr. POPE: Object as leading and immaterial.

A. Yes.
Q. Do you know whether Juan Bautista Lucero claimed to be the owner of it while he occupied it?

Mr. POPE: Same objections.

A. Yes.
Q. In what year was it that you and your brother left the property and turned it over to Juan Bautista Lucero?
A. I do not remember in what year.
Q. How many years ago?
A. It is 30 years ago, about.
Q. That is all.

Cross-examination by Mr. POPE:

Q. You say the Indians drove you away; what year was that?
A. I do not know; it was a long time ago.
Q. Who was on the land when the Indians drove you away?
A. My brothers and myself.
Q. How long did you stay away?
A. We stayed away *a* about a year without coming back.
Q. Was that after your father's death or before?
A. No; my father he died already.
Q. How many varas of land did your father cultivate?
A. About a hundred varas.
Q. That was all the land your father cultivated while he lived there, was it?
A. Yes; that was all.
115 Q. How much land did you and your brothers cultivate when you were there?
A. I say that we cultivated about a hundred varas.
Q. Never cultivated any more while you stayed there?
A. No.
Q. How many varas did Juan Bautista Lucero cultivate?
A. I do not know.
Q. Did he cultivate as much as you and your brother cultivated, or more?
A. *I* little more.
Q. About a hundred varas more?
A. Yes.
Q. He did not cultivate two hundred varas, did he?
A. Yes.
Q. How much more?
A. I guess about 250 varas.
Q. Was that right near the house where he lived?
A. Yes.
Q. He did not cultivate any other land on that tract, did he?
A. No.
Q. Your father did not cultivate any land on that tract except what you have stated?
A. Only that.
Q. You and your brother did not cultivate any more land except what you have stated?
A. No.
Q. The flocks you have mentioned, they were pastured around the spring, were they?
A. Yes.
Q. They pastured for some distance off from the spring, did they?
A. Yes; my father had ordered that they should not drive the flocks over the spring.
Q. You pastured them all around the grant wherever you could get the best pasture, did you?
A. Yes.

Q. It did not matter whether you went up on the mesa or whether you pastured all around the mesa?

A. Yes.

Q. Nobody objected to your pasturing your flocks wherever you could find pasture all around there?

A. No.

Q. You did not have to stay inside of the grant to pasture?

A. No.

Q. And you did not pasture outside of the grant?

A. Yes; sometimes when the horses would go out.

Q. And the same way with the goats, was it?

A. Yes.

Q. And the same way with the cows, was it?

A. Yes.

Q. You say you first knew this tract of land in 1830?

A. Yes.

Q. Who was living on it then?

A. Ourselves.

Q. You were living on it then?

A. Yes.

116 Q. Was that the same time that possession was delivered?

A. No; it was given in '42.

Q. You lived on it quite a number of years before possession was given?

A. Yes.

Q. You pastured your flocks on it then, did you?

A. Yes.

Q. How many of your brothers went with your father when this possession was given that you have been talking about?

A. Five of us.

Q. You say Salvador Gonzales was not with you?

A. No.

Q. He was not with you?

A. No.

Q. Before your father got possession from 1830 on he cultivated this land as well as pastured his flocks on it, did he?

A. Yes.

Q. You did not know anything about any order from General Armijo except what your father told you, do you?

A. Yes.

Q. That is all you know about it?

A. That is all I know.

Q. Who else was present except your five brothers when this land was delivered?

A. There was nobody else; my father was there.

Q. Damasio Salazar there?

A. Damasio Salazar and his secretary was there.

Q. Anybody else?

A. Yes; these were the only ones.

Q. These ones that you have mentioned were the only ones that were there?

A. Yes.
Q. That is all.

Redirect examination by Mr. CATRON:

Q. Did you hear Damasio Salazar say that he had an order from the governor?

Mr. POPE: Object as leading and suggestive of the answer.
The COURT: We will pass upon it when we come to it.

Q. State whether you heard Damasio Salazar say that he had an order from the governor at that time to deliver the possession of the grant.

Mr. POPE: Object as suggestive of the answer.

Q. What did he say in respect to an order from the governor?

Mr. POPE: Object as hearsay. It is not proper redirect examination.

A. That the order was to deliver the land to my father, and Damasio Salazar sent a communication to General Armijo stating that the land had been delivered.

117 Mr. POPE: Object for the reasons stated and move to strike it out.

Q. That is all.

Mr. POPE:

Q. All you know about a communication being sent to Governor Armijo was what your father told you, is it?
A. Yes.

Mr. CATRON:

Q. Did Damasio Salazar also tell you?

Mr. POPE: Object as leading.

A. Also, the same.

Mr. POPE:

Q. And that is all you know about it?
A. Yes.

Mr. CATRON:

Q. You have been acquainted with Mr. Sulzbacher?
A. Yes.
Q. State whether or not you conveyed your interest in this property to him.

Mr. POPE: Object as improper.

A. Yes; to Luis Sulzbacher.

Mr. POPE:

Q. You still claim an interest in this grant, do you?
A. Yes.
Q. That is all.

Mr. CATRON: That is all.

August 26th, 1896, the following further testimony was taken before Fuller, A. J., at the same place and same attorneys present:

MAY HAYS, a witness of lawful age, being produced, sworn, and examined on the part of the plaintiff, testified, upon direct examination by Mr. Catron, as follows:

Q. State your name, age and residence?
A. My name is May Hays.
Q. Are you the claimant in this Ojo del Apache grant?
A. Yes.
Q. How long have you known the property you are claiming?
A. 25 or 30 years.
Q. Did you know Ventura Trujillo?
A. No.
Q. Do you know any of his children?
A. Yes.
Q. State what ones of them you knew if you can remember.
A. I cannot remember the names of only Francisco; but I got a list of the names.
Q. Did you know one by the name of Guadalupe?
A. I think I recollect him.
Q. Do you know Damasio Trujillo?
A. Yes.
Q. Was he a son of Ventura Trujillo?
A. Yes; a son.
Q. How do you know; did he ever tell you?
A. Yes.
Q. Is he living or dead?
A. Dead.
118 Q. Did you know Francisco Trujillo?
A. Yes.
Q. Isidro Lopes; did you know him?
A. Yes.
Q. Do you know what relation Isidro Lopes was to Ventura Trujillo?
A. Son-in-law.
Q. Did you ever have a conversation with him as to the relationship of his wife to Ventura Trujillo?
A. No, not particularly; he was a son-in-law.
Q. Do you know whether Ventura Trujillo is living or dead?
A. He is dead.
Q. Did you know Juan Catarino Romero?
A. Yes.

Q. Do you know whether he is any relation of Ventura Trujillo?

A. By marriage; son-in-law.

Q. How do you know he was a son-in-law?

A. I talked with him.

Q. Do you know whether he is living or dead?

A. He is dead.

Q. Who occupied this property, if any one, when you first knew it?

A. When I first knew it Juan Bautista Lucero occupied it.

Q. Do you know what were the boundaries of the land as he occupied it?

A. Yes.

Q. State them.

A. Starting at a high point of the Ojo del Seco and running to a certain Lake Lagunitas; from there it turns around across the hills and across a box cañon to the road known as the Comanche road.

Q. What was the boundary on the north side?

A. On the north side the mesa of the Apache.

Q. Is that the first or second mesa, or is there any other mesa known as the Mesa del Apache?

A. It is the first one.

Q. What is the boundary on the east side?

A. On the east side the Chupinas mesa.

Q. Is it the first mesa east of the Apache spring?

A. It is the first mesa east of the Apache spring.

Q. What is the boundary on the south side?

A. The road.

Q. What is that road called?

A. The Comanche road.

Q. What direction is that road from the Apache springs?

A. South.

Q. What is the boundary on the west side?

A. On the west side the Chupaderos or Lagunitas.

Q. What direction is that from the Apache spring?

A. That is west.

Q. Now, when you first knew Juna Bautista Lucero as oc-
119 cupying this property, how was he ocupying it; in what manner?

A. He was cultivating and had a small body of stock.

Q. Do you know what claim, if any, he made in regard to the land; if so, what was it?

Mr. POPE: Object as immaterial, irrelevant, and incompetent and hearsay.

Q. He claimed it through the widow; he married the widow of Trujillo.

Q. Did he claim it as his own or hold it for somebody else?

A. He claimed it as his own property.

Q. The property that is within these boundaries you have mentioned?

A. Yes.

Q. Now, how long did he occupy it, to your knowledge?
A. He occupied it about 5 or 6 years.
Q. And who succeeded him in the occupation of it?
A. Mr. John L. Taylor.
Q. How did Mr. Taylor occupy it?
A. He occupied it by living on it and raising stock; grazed stock on it.
Q. To what extent did he graze stock on it?
A. Well, pretty much all over it; he had a herd of sheep; he had a lot of oxen and some stock cattle.
Q. What claim, if any, did he make to the property?
A. He claimed the whole boundaries, as I have mentioned, as his property.
Q. How long did he remain in possession of it?
A. I cannot recollect exactly; it was about 10 years.
Q. Who succeeded Mr. Taylor in the possession of the property?
A. I did.
Q. How long have you had possession of it?
A. I had possession, as well as I can recollect, since '76, the latter part of '76, or the fore part of '77; I cannot recollect which year.
Q. How have you occupied it?
A. By grazing stock and living on it.
Q. To what extent have you grazed stock on it?
A. I have grazed my stock all over it.
Q. What claim, if any, do you make to the property while you have had it in your possession, as to whether or not it was your property?
A. I hold it as my property by purchase from Mr. Taylor and claim just the same limits as he claimed.
Q. Did you purchase from Taylor?
A. I purchased from Taylor and Luis Sulzbacher.
120 Q. That is all.

Cross-examination by Mr. POPE:

Q. How much land did Juan Bautista Lucero cultivate?
A. Well, I suppose two or three acres.
Q. Right at the spring?
A. Right at the spring; cultivated some little close to the house.
Q. But he did not cultivate over two or three acres altogether?
A. Yes.
Q. Was there any fence around it?
A. No fence.
Q. The stock that he had grazed both in and outside of these boundaries?
A. Yes.
Q. Grazed all over the boundaries?
A. Inside and sometimes outside.
Q. Mr. Taylor, how much did he cultivate?
A. He did not cultivate any; he had a garden spot of about an acre.

Q. Right there by the spring?
A. No; it was about something near a mile from the spring.
Q. That is all he cultivated?
A. Yes.
Q. His stock grazed both inside and outside?
A. Yes.
Q. How much do you cultivate?
A. I cultivate this garden spot; that is all.
Q. You live there?
A. Yes; I live there.
Q. Your stock graze just like his stock did?
A. Yes.
Q. Quite a number of people there claiming under the Government?
A. No; there is not many, three or four families or five families.
Q. Inside of the limits of this track you have mentioned?
A. Yes.
Q. Well, do they cultivate any?
A. Yes; small spots.
Q. Have any stock?
A. They have some little stock.
Q. Where does their stock graze; just where your stock graze?
A. Just as my stock graze.
Q. Are their ranches near the spring or farther south?
A. There is one party south and another southwest; there is two brothers, Americans, that live south of the spring.
Q. How far from your place?
A. It is about a mile and a quarter or half to their houses.
Q. What are their names?
A. Adlons.
121 Q. Any one else that lives there on this tract of land under the Government?
A. This man named Solano and two or three families that I do not know their names.
Q. How far do they live from you?
A. They live about two miles.
Q. Do they plant and have heards just like the others?
A. They have herds and plant some little.
Q. Who else is living on the grant?
A. A couple—three men named Montoyas.
Q. They are claiming under the Government, too?
A. They claim under—well, I can't say.
Q. But they don't claim under your title?
A. No.
Q. How far are they from the spring?
A. Two or three miles from the spring.
Q. Inside of the grant?
A. Inside of the grant.
Q. Who else, if anybody?
A. Two men and their families, but I do not recollect their names; but they have only been there a year or so.

Q. They cultivate, do they?

A. I see they have some land broke up this season. I do not know that they cultivate any; they broke up some land this season. I do not know if they planted any.

Q. How far are they from you?

A. About three miles.

Q. Some of these parties have been living there for quite a number of years?

A. Yes; those parties of Montoyas have been living there, I suppose, for thirty or forty years.

Q. Living there before you went there?

A. Yes.

Q. Some of these other people have been living there for some time, have they?

A. 8, 10 to 12 years.

Q. That is all.

Mr. CATRON:

Q. None except the Montoyas have lived there for more than ten to twenty years?

A. No.

Q. You say you do not know how the Montoyas claim?

A. No.

Q. That is all.

Mr. POPE: That is all.

122 I hereby certify that the above and foregoing thirty-seven pages contain a full, true, and correct transcript of the testimony of the above-named witnesses taken in said cause.

Santa Fé, New Mexico, September 23rd, 1896.

W. J. McPHERSON,
Official Stenographer.

122a EXHIBIT "C."

VENTURA TRUJILLO, Deceased. Apache Spring Tract.

JUAN BAUTISTA LUCERO, being by the surveyor general duly sworn, on his oath declares:

By JOHN S. WATTS, attorney for present claimant:

Question. What is your name, age, and residence?

Answer. My name is Juan Bautista Lucero; my age is sixty-two years, and I reside at Anton Chico.

Q. Do you know the Apache Spring tract of land? If so, please state how long you have known it and where it is situated.

A. I know the tract mentioned and have known it more than twenty years, and it lies in the county of San Miguel, in this Territory, about six miles north of the town of Anton Chico, and I think about fifteen miles south of the town of Las Vegas.

Q. State, if you know, who first went to the Apache Spring place to occupy and cultivate it.

A. It was Ventura Trujillo, now deceased. When I first knew Trujillo he was living at the place, which was, perhaps, about the year 1855. I do not know how long he lived there, but it was a considerable time. He moved away from there and died at the town of San Miguel.

Q. When Trujillo died who went to the place to reside, if any one?

A. I did. Trujillo having died, I purchased the place from his heirs, and I occupied the place four or five years, when I sold out the place to John L. Taylor, who, so far as I know, had no partner in the purchase, and thenceforward it has been occupied by Mr. Taylor and his friend or partner, Mr. Henry—that is, I knew him only by the name of Henry. Mr. Taylor is now occupying the place.

Q. Is the paper marked Exhibit B, the deed you executed to Taylor when you sold him the property?

A. I cannot read, but upon looking at the paper mentioned I am of opinion it is the same.

Q. Have you any interest in this property now?

A. I have none now.

Question by the SURVEYOR GENERAL. When did you purchase the property from the heirs of Trujillo and go into possession of it?

A. I do not remember, but the deed will show. I took possession the year after the date of the deed. I paid the heirs twelve
123 dollars for the land.

Q. How much did you sell the land for and have you been paid in full for it?

A. I sold the land for one hundred dollars cash and fifteen head of cattle to Mr. Taylor and have been paid in full by him.

Q. Do you know how much land the tract of the Apache spring contains?

A. I do not know.

Q. Do you know the boundaries? And, if so, state them.

A. I do know them. They are on the north the point of the mesa, on the east the mesa or table-land, on the south the old road of the Comanche traders, and on the west the hills adjoining the little cañon of the Lagunitas. The tract contains both grazing and cultivable land. The tract does not to my knowledge contain any mines, minerals, or coal.

Q. State, if you can, the cause of Trujillo's moving away from the place.

A. He moved away on account of the hostilities of the Indians, who were at that time very bad.

his
JUAN B. LUCERO. x
mark.

Sworn to and subscribed before me this Dec. 2, 1872.

JAMES K. PROUDFIT,
Surveyor General.

124 VENTURA TRUJILLO, Deceased. Ojo del Apache Tract.

Supplementary Testimony.

RAFAEL ARAGON, being by the surveyor general duly sworn to depose in this case, on his oath declares:

Question by Mr. WALDO, attorney for claimant, John L. Taylor. What is your name, age, occupation, and place of residence?

Answer. My name is Rafael Aragon; my age is seventy-seven years; my occupation is laborer, and my place of residence is Puerto de Luna, in the county of San Miguel. I was born here at Santa Fé, and moved to the section of country I now reside in in the year 1828, and have thenceforward lived there.

Q. Are you acquainted with the tract of land in that county known as the Ojo del Apache tract? And, if so, state where it is situated and what are the boundaries.

A. I know such a tract and its boundaries are: On the N. and E. the Mesa de la Chupaines; on the S. the old road always known as the Comanche Country road, which runs by the point of the Chupaines mesa; on the W. the hills which adjoin the Cañoncito.

Q. State all you know concerning the claim here in question, particularly as to when, by whom, to whom, and how the grant was made.

A. The grant was made to Ventura Trujillo and his children in the year 1841 by the alcalde, Damasio Salazar. I myself wrote the granting document and was at the time the secretary of said Alcalde Salazar. The grant was made under and in virtue of an order from the governor. The order referred to was a written one addressed to said Alcalde Salazar through Guadalupe Miranda, secretary of state of the government, and was of about this tenor, to wit: I am directed by his excellency the governor to say to you that upon the receipt hereof you will proceed to the place called the Ojito del Apache and will there place the petitioner, Ventura Trujillo, in possession of that land. Salazar was addressed in this communication as the alcalde of the second demarcation of San Miguel, and the communication was deposited among the archives of the alcalde's office. The directions of the order were carried out by the alcalde by placing Trujillo in possession of the land, and the alcalde then reported to Secretary Miranda that the governor's order had been duly executed. Salazar went upon the spot in company with
125 Trujillo and placed the latter in possession by pointing out and designating to him the boundaries of the tract. Trujillo went upon the land to occupy it, I think, in July, 1842. He occupied the place four years, having built upon it a small house, constructed some small tanks, and planted some ground. He was succeeded on the place by Juan Lucero, he by Jesus Casados, and he by John L. Taylor, here present.

Question by the SURVEYOR GENERAL. Who was governor when this grant was made?

Answer. Manuel Armijo.

Q. Did you ever know a man named Salvador Gonzales? If so, where, and is he now living?

A. I knew such a person and he is now dead.

Q. Is Damasio Salazar living?

A. He is dead.

Q. Did you know personally Guadalupe Miranda and is he alive?

A. I did not know him personally. I understand he is alive and residing now at El Paso.

Q. Did you know personally Governor Manuel Armijo?

A. I knew him personally.

Q. What public positions, if any, have you held?

A. I have never held any office except that of secretary of alcalde.

(The surveyor general here presents to the witness the original grant paper in the case marked Exhibit A, which the witness identifies as having been written by himself and signed by himself as an attending witness.)

Q. Examine the paper marked Exhibit A and state whether it contains any allusion to the order you have mentioned as given by Governor Armijo.

A. I believe it contains none.

Q. Why, in writing the grant paper Exhibit A, did you not make some allusion therein to the order of the governor?

A. I presume it was omitted by mistake.

Q. When you wrote the document, Exhibit A, where was the governor's order?

A. It had been turned into the alcalde's office.

Q. Was Damasio Salazar an educated man and a man of business capacity?

A. He was not an educated man, but quite a business man. He could neither read nor write and could scarcely sign his name, and for that reason, as alcalde, had to have a secretary.

126 Q. Have you now or have you ever had any interest in the land now in question?

A. I have not now and never have had any interest in this claim.

RAFAEL ARAGON.

Sworn to and subscribed before me this 31st October, 1873.

JAMES K. PROUDFIT,
Surveyor General.

127 To Benjamin Stevens, deputy clerk, &c.:

Know ye that we, in confidence of your prudence and fidelity, have appointed you and by these presents do give to you full power and authority to examine and take the deposition of one Guadalupe Miranda in a proceeding now pending before me, surveyor general of New Mexico, supplementary to proceedings heretofore had before me in the matter of the private land claim reported as No. 72 for the Apache Spring tract, in San Miguel county, New Mexico.

Therefore we authorize and direct you that, whenever and wherever the said Guadalupe Miranda shall be brought before you, you examine him on his oath touching his knowledge of the existence of a grant of land situate in San Miguel county, New Mexico, the boundaries thereof if he knows them, when said grant was made, by whom made and to whom made, and all that he may know about said grant, and as to any interest which he now has or ever has had in said grant; and reduce said examination to writing and return the same, together with this commission, closed under your seal, to this office with all convenient speed.

Dated Nov. 1st, 1873.

JAMES K. PROUDFIT,
Surveyor General of New Mexico.

GUADALUPE MIRANDA, having been first duly sworn by me, testifies as follows, to wit:

My name is Guadalupe Miranda. I am sixty-three years old. I now live in El Paso, Mexico. I was secretary of the Territory of New Mexico under the Mexican government from the ninth day of April, eighteen hundred and thirty-nine, until the last of October, eighteen hundred and forty-three. During the same time General Manuel Armijo was governor of the Territory of New Mexico under the Mexican government. I knew, during that time, Ventura Trujillo. He lived *at* in San Miguel del Bado, in the present county of San Miguel, in the Territory of New Mexico. I remember that about the year eighteen hundred and forty-one or eighteen hundred and forty-two said Ventura Trujillo petitioned to said Governor Armijo for a grant of land situated in the then "demarcacion" of said San Miguel del Bado, now the county of San Miguel, at a place known as "Apache Spring" (Ojo del Apache). I do not remember the boundaries of the lands asked for, but it was situated near the grants formerly made to the town of Anton
128 Chico, to Juan Estevan Pino and to Antonio Ortiz, and to the town of San Miguel del Bado. The said Governor Armijo granted the said petition and issued a decree granting the land prayed for to the petitioner, and directed the corresponding constitutional alcalde (whose name I do not remember) to place the petitioner in possession of the lands granted as aforesaid; which said decree he signed as governor of the Territory, and I signed the same along with him as secretary of said Territory. The constitutional alcalde, to whom was referred the matter of putting the petitioner in the possession of the said lands, made, some time afterwards, his return that he had placed the petitioner, Ventura Trujillo, in possession of the said land in obedience to said decree and order, after which the original papers and the return of the said alcalde were duly deposited in the archives of New Mexico, and remained therein under my charge as public records, I being at that time the legal custodian of said archives and records by virtue of my said office. I have no interest whatever in the lands referred to, nor in the claim for the same. I know that from the time of the making of said grant the said Ventura Trujillo was considered and reputed to

be the lawful owner and possessor of said lands by the people in general, as well as by the constituted authorities of the Territory of New Mexico under the Mexican government. I cannot say as to whether the sons of the said Ventura Trujillo were joined with him in the said grant or not. He was the head of the family, and managed and controlled all the family affairs under the Mexican customs. I do not know that said papers and records pertaining to said grant are now in the archives of New Mexico, as I have been informed that much of the archives and records have been lost and destroyed. It has been so long since I saw said original papers in this case that, without refreshing my memory by some of them, I cannot state minutely the facts and particulars of said grant. The papers, however, were full and complete and the grant perfect, according to the laws of Mexico.

GUADALUPE MIRANDA. (RUBRIC.)

UNITED STATES OF AMERICA,
Territory of New Mexico, County of Donna Ana, } ss:

I, Benjamin Stevens, deputy clerk of the third judicial district of the Territory of New Mexico, hereby certify that on the 18th day of November, A. D. 1873, at the clerk's office of said third judi-
129 cial district in La Mesilla, county of Donna Ana, Territory of New Mexico, being the time and place appointed by me in that behalf, before me came personally Guadalupe Miranda, who, after being carefully examined and cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter set forth and described in the commission directed to me by the surveyor general of New Mexico and hereto annexed, did, in my presence, subscribe the foregoing deposition after the same was reduced to writing by me.

That I am not of counsel in said matter, nor in anywise interested in the result of the same in the said application before the surveyor general.

In witness whereof I have hereunto set my hand and affixed the seal of the said district court of the third judicial district of the Territory of New Mexico this fifteenth day of November, A. D. 1873.

[SEAL.]

WM. R. SNIDER, *Clerk*,
By BENJAMIN STEVENS,
Deputy Clerk.

130 *Papers in Reported Number* 72.

131 SANTA FÉ, N. M., *Sept.* 21, 1872.

Hon. James K. Proudfit, surveyor general, Territory of New Mexico.

SIR: You will find enclosed the petition of John L. Taylor, of Apache Spring, San Miguel county, N. M., with the original title papers and deeds of transfer. You will also find a sketch map of the land included in the boundaries in the original grant. I wish to prove the occupancy and residence of the present owner, Mr.

John L. Taylor, and will produce that proof at such time as may suit your convenience.

Yours respt.,

JOHN S. WATTS,
Att'y for John L. Taylor.

TERRITORY OF NEW MEXICO, }
County of Santa Fé. }

Know all men by these presents that I, John L. Taylor, a resident of Apache Spring, San Miguel county, New Mexico, an owner and occupier of the ranch known as the Apache Spring, situate in San Miguel county, Territory of New Mexico, have constituted and appointed, and do by these presents constitute and appoint, John S. Watts, attorney-at-law, of Santa Fé, New Mexico, my true and lawful attorney, for me and in my name to present and prosecute my claim to the Apache Spring grant of land before the Hon. James K. Proudfit, surveyor general of the Territory of New Mexico, for its investigation and approval and before Congress for its confirmation, and when confirmed to apply for its survey and patent, and I hereby ratify and confirm what my said att'y may do in the premises as fully as if done by me in person.

Witness my hand and seal this the 2d day of December, 1872.

JOHN L. TAYLOR. [SEAL.]

Witnesses:
M. BREEDEN.
DAV. J. MILLER.

TERRITORY OF NEW MEXICO, }
County of Santa Fé. }

132 This day personally appeared before me, M. Breeden, clerk of the United States district court in and for the 1st judicial district, Santa Fé county, Territory of New Mexico, the above-named John L. Taylor, to me personally known as the person signing the above power of att'y, and in my presence acknowledged the execution of the above power of att'y to John S. Watts to be his voluntary act and deed for the purposes therein mentioned.

Witness my hand and seal of said court, at Santa Fé, New Mexico, this 2d day of December, 1872.

[SEAL.] M. BREEDEN, *Clerk.*

(Endorsement:) Power of attorney. John L. Taylor to John S. Watts.

TERRITORY OF NEW MEXICO, }
County of Santa Fé. }

To the Hon. James K. Proudfit, surveyor general of the Territory of New Mexico, county of Santa Fé, sitting at Santa Fé, New Mexico, for the hearing of private land claims under the 8th section of an act of Congress passed July 22nd, 1854. See vol. 10, Statutes at Large, p. 309:

Your petitioner, John L. Taylor, resident of Apache Springs, San Miguel county, Territory of New Mexico, most respectfully repre-

sents to the hon. surveyor general that he is the owner of a certain tract or parcel of land situate in the said county of San Miguel, and bounded as follows, to wit: On the north by "La Mesa," on the south by the old road of "Los Chupaines," on the east by the "La Mesa de Los Chupaines," on the west by the hills bordering on the "Cañoncito de la Lagunita."

Your petitioner would further state that said grant of land was duly made according to law and the usage and customs of the laws of Mexico on the second day of July, eighteen hundred and forty-two (1842), by one Demasio Salazar, a justice of the peace in the said county of San Miguel del Bado, to one J. C. Bentura Trujillo, a resident of said county of San Miguel del Bado.

133 Your petitioner would further state that the said J. C. Bentura Trujillo, after the making of said grant and the execution and delivery of said title to him by the said Damasio Salazar, went into the quiet, peaceful, and *a*lwful possession, use, and occupation of said lands and so continued to use, cultivate, reside upon, and occupy said lands so granted to him until his death, and on the 2nd day of February, 1848, the said J. C. Bentura Trujillo was residing on said lands with his family and claiming the same as his under said grant. Your petitioner would state that at the date of said grant of said lands they were the vacant public lands of the Republic of Mexico, situate within the local jurisdiction of the said justice of the peace of San Miguel del Bado, Demasio Salazar.

Your petitioner would further state that after the death of the said J. C. Bentura Trujillo, to wit, on the 21st day of September, 1855, the widow and heirs of the said J. C. Bentura Trujillo, deceased, by Juan Nepomoceno Lopez, their duly authorized attorney, sold, transferred, and conveyed said lands, houses, and improvements thereon situate to one Juan B. Lucero, then and there a citizen of the United States and domiciled within said jurisdiction of San Miguel del Bado, and the said Juan B. Lucero was then and there placed in the lawful, peaceful, and quiet possession of said premises and so continued until the 24th day of March, 1866, when the said Juan B. Lucero bargained, sold, and conveyed said lands to the said petitioner, John L. Taylor, and Henry D. Gorham and placed the said John L. Taylor and Henry D. Gorham in the like quiet, peaceful, and lawful possession, use, and occupancy of said lands, with the houses and improvements thereon situate.

Your petitioner would further state that during all the time from the date of said purchase and possession of said lands he, the said petitioner, has continued to live upon, use, cultivate, and enjoy said lands and make said lands his home and permanent residence for himself and family.

Your petitioner would further state that he knows of no conflicting claim of title to said lands nor does he believe that the

134 lands within the boundaries above set forth as his will in any manner encroach upon the lands of any adjacent owners.

Your petitioner would further state that the long-continued occupancy, use, cultivation, residence, and claim to said lands vested in the original grantee a perfect title to said lands and creates such

title as was protected by the treaty of Guadalupe Hidalgo, 8 and 9 articles, and by law entitled to be confirmed to your petitioner as the *bona fide* holder of said original title to said lands and actual occupant and claimant ever since his purchase of said lands from the said Juan B. Lucero.

Your petitioner would further state that but little of said land is suitable for cultivation, and the grant does not contain a large quantity of land, but until the same is properly surveyed the quantity of land will be a matter of mere supposition and opinion.

Your petitioner would further state that he herewith presents a rough and imperfect sketch or plat of said grant indicating the out boundaries of said grant.

Your petitioner would further state that the said boundaries of said grant are well known, visable, and permanent landmarks, well known in the vicinity, and readily and certainly identified.

Your petitioner would further state that the original title papers and transfer and conveyance to the said Juan B. Lucero were duly recorded on the 10th day of May, 1866, in Book 3, pages 36 and 37, of the records of titles in and for San Miguel county, Territory of New Mexico, in which county said lands are situate. Your petitioner hereby presents to the hon. surveyor general of New Mexico the original title herein to J. C. Bentura Trujillo and the transfer of his widow and heirs to said lands, and asks that it may be filed with this petition and made a part of the same, marked Exhibit "A" herein, and that a duly certified copy be furnished your petitioner.

Your petitioner further states that he hereby presents the original deed of Juan B. Lucero to your said petitioner and the said Henry D. Gorham for the sale, conveyance, and transfer of said lands to your said petitioner by the said Juan B. Lucero, and asks
135 that it may be filed with this petition and made a part of the same, marked as Exhibit "B" herein, and that a duly certified copy of the same be furnished your petitioner herein.

Your petitioner would further state that he also files herein a correct and duly certified copy, translated from the original Spanish into English, of the said grant and transfer deed and conveyance from Juan B. Lucero, marked as Exhibit "C" herein, and asks it to be made a part of this petition.

Your petitioner would further state that he also now files as a part of this petition a duly certified copy in English of the original Spanish deed of conveyance to the said petitioner by the said Juan B. Lucero, and asks that it be made a part of this petition, marked as Exhibit "D" herein.

Your petitioner would further state that under and by virtue of the organic law of 9th September, 1850, the Congress of the United States by said act vested the Legislative Assembly of the Territory of New Mexico with power to pass laws upon all rightful subjects of legislation not in conflict with the Constitution and laws of the United States, and made all such laws of the Legislative Assembly of the Territory of New Mexico binding, effective, and in full force unless disapproved by the Congress of the United States.

Your petitioner would further state that on the 1st day of Febru-

ary, A. D. 1858, the said Legislative Assembly of the Territory of New Mexico passed an act for the protection of the rights and titles of the citizens of New Mexico, "having had possession for ten years of any lands, tenements, or hereditaments which have been granted by the Governments of Spain, Mexico, or the United States, or by whatsoever authority empowered by said governments to make grants to lands holding or claiming the same by virtue of a deed, or deeds of conveyance, devise, grant, or other assurance purporting to convey an estate in fee simple, and no claim by suit in law, or equity effectually prosecuted shall have been set up or made to the
136 said lands, tenements or hereditaments within the aforesaid time of ten years then and in that case the person or persons, their heirs or assigns, so holding possession as aforesaid, shall be entitled to keep and hold in possession such quantity of lands as shall be specified, and described in his, her, or their deed of conveyance, devise, grant, or other assurance as aforesaid in preference to old and against all and all manner of person or persons whatsoever."

Your petitioner would further state that he now is, and always has been, a loyal citizen of the United States, and he and his family, and those under whom he claims, have resided upon, used, occupied, and claimed said grant of land ever since the 2nd day of July, A. D. 1842, now more than twenty years, without any suit in law or equity having been instituted or prosecuted effectually against him or those under whom he claims, and the said petitioner asks that the protection given by said act of limitations of the Legislative Assembly of the Territory of New Mexico, found on page 516 of the Compiled Laws of New Mexico, be enforced and applied to entitle the said petitioner to keep and hold in his possession the quantity of land in said grant and deed of conveyance mentioned.

Your petitioner would further ask that the hon. surveyor general of the Territory of New Mexico take jurisdiction of this claim under the said act of Congress of the 22nd of July, 1854, and upon the premises being found true and satisfactorily proven, your petitioner asks that said title of your petitioner be recognized and confirmed as a *bona fide* grant and perfect title, and that said claim may be reported to the Secretary of the Interior with the view to its being sent to Congress to be confirmed as a valid title to said lands entitled to recognition and protection as a *bona fide* grant and entitled to confirmation under the treaty of Guadalupe Hidalgo, made the 2nd day of February, A. D. 1848, between the United States and Mexico.

Your petitioner would further state that he herewith presents a rude and imperfect sketch map or plat of the boundaries of said grant and the form of the grant without undertaking to state
137 that on actual survey the said sketch map or plat will be accurate or correct, which could only result from actual survey of the said boundaries called for in said grant and title papers in the case. Your petitioner asks that this rude sketch or map of the boundaries of said grant be made a part of this petition and marked as Exhibit "O" herein.

Your petitioner would further state that one Henry D. Gorham

was a partner of the said petitioner in said ranch, and the deed of Juan B. Lucero, under date of 24th March, 1866, is executed to your petitioner and the said Henry D. Gorham jointly, and this will more fully appear by reference to said deed, hereby made a part of this petition, marked Exhibit "B" herein.

Your petitioner would further state that, as surviving partner of the firm of Taylor & Gorham and as administrator of the estate of said Henry D. Gorham, deceased, the said petitioner, under authority of the probate court of San Miguel county, sold and conveyed to May Hays, of Las Vegas, New Mexico, said interest of said Henry D. Gorham and executed to him a deed for the same on the 22nd day of July, 1869, a certified copy of which deed is made a part of this petition, marked as Exhibit "L" herein.

Your petitioner would further state that the conveyance and transfer of said May Hays to said petitioner was made 22nd July, 1869, and a certified copy of said transfer and deed of the said May Hays to your petitioner, marked as Exhibit "M" herein, is now filed with this petition.

Your petitioner further asks that upon the investigation of this title, if found valid and *bona fide* and entitled to confirmation by Congress, that its confirmation be made to the said John L. Taylor, the present owner by regular claim of title from the original grantee herein; all of which is most respectfully submitted to the action and consideration of the hon. surveyor general in and for the Territory of New Mexico.

JOHN L. TAYLOR,
By JOHN S. WATTS, *Att'y.*

Endorsement: Ventura Trujillo. File 148. John L. Taylor. Petition for confirmation of Apache Spring grant.

138 This document is duly recorded on pages 97, 98, 99, 100, 101, 102, and 103, in vol. 4 of Land Claim Records in the office of the surveyor general.

(Here follows map marked page 139.)

140 Office copy.

Ojo del Apache tract.

VENTURA TRUJILLO or BENTURA TRUXILLO, Original Grantee; John L. Taylor, Claimant.

(*Opinion of Surveyor General.*)

The petitioner, John L. Taylor, by John S. Watts, his attorney, brings his claim before me and asks approval of his alleged title to the Ojo del Apache of Apache Springs tract of land in the county of San Miguel, under the act of the territorial legislature of New Mexico, approved February 1, 1858, entitled "Act of limitation," the treaty of Guadalupe Hidalgo, and the act of Congress of July 22, 1854, establishing this office.

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED

The petition sets forth that Demasio Salazar, a justice of the peace, granted the tract of land in question to Bentura Trujillo on July 2, 1842; that afterwards Trujillo went into possession; that he lived there February 2, 1848; that September 21, 1855, Juan Nepomoceno Lopez, as attorney for widow and heirs of Trujillo, deceased, sold and conveyed the land to Juan B. Lucero. See grant paper and Exhibit "D." That Lucero took possession and held it until 24 March, 1866, when he sold and conveyed it to John L. Taylor and Henry D. Gorham. See Exhibit "B." That John L. Taylor, as administrator of the estate of Gorham, deceased, sold and conveyed the interest of Gorham to May Hays July 22, 1869—see Exhibit "L"—and on same day Hays deeded the same share to Taylor, the petitioner. See Exhibit "M." Much other matter is contained in the petition, but the above synopsis sufficiently sets forth the ppoints to be considered.

The tract of land claimed is large, containing not less than 25,000 acres, and very likely much more than that. The petition
141 recites that previous to the occupation by Trujillo the lands in question were "vacant public lands of the Republic of Mexico," and upon this point there is no dispute.

I have not been referred to or shown any Mexican law or regulation in force in this Terri ory on July, 1842, or at any other time, which conferred upon justices of the peace, or upon any officer except the governor and captain general, the power and authority to make gifts, concessions, or sales of the "vacant public lands of the Republic of Mexico." This office is not supplied with any laws or reports of law decisions, either Spanish, Mexican, or American, except the United States Statutes at Large, nor is counsel provided for the United States in the investigation of private land claims in this office. I have not been able to find and have never seen the act said to have been passed by the Mexican congress August 18, 1824, or the regulations said to have been made under it November 21, 1828, relating to grants of lands in this and other Territories then belonging to the Republic of Mexico.

In a borrowed book, however, 20 Howard, I find in opinion of the court, in The United States *vs.* Cambuston, 59 and following, this abstract:

"The regulations for the colonization of territories of the government of Mexico, made 21 November, 1828, in pursuance of the act of the general congress, August 18, 1824, provided:

1st. That the governors of the territories should be empowered to grant vacant lands, among others, to private persons who may ask for them for the purpose of cultivating and inhabiting the same.

2d. That every persons soliciting lands shall address to the governor a petition, expressing his name, country, and religion, and describing as distinctly as possible, by means of a map, the land asked for.

3rd. The governor shall proceed to obtain the necessary information, whether the petition contains the proper conditions required by law of 18 August, 1824, both as regards the land and the peti-

tioner, in order that the application may be at once attended to; or, if preferred, the municipal authority may be consulted, whether there be any objection to the making of the grant.

4th. This being done, the governor will accede or not to such petition, in conformity to the laws upon the subject.

5th. The definitive grant asked for being made, a document signed by the governor shall be given, to serve as a title to the party interested, wherein it must be stated that the grant is made in exact conformity with the provisions of the law in virtue of which possession shall be given.

6th. The necessary record shall be kept, in a book provided for the purpose, of all the petitions presented and grants made. with maps of the lands granted, and a circumstantial report shall
142 be forwarded quarterly to the supreme government."

The court mentions other regulations not deemed essentia to recite in the case before it. In that case Cambuston claimed lands under a grant made by Pico, then governor of California, territory of Mexico, on the 23 May, 1846, and the court held tha because it was not shown in the record that Governor Pico had com plied substantially with the requirements of the regulations recited the grant to Cambuston could not be confirmed to him. In regard to matters of custom, the court in that case says: "The ques tion here is not whether the fact of the habitual grant of lands b Mexican governors of the Territory of California to settlers, and also whether the customary mode and manner of making grants do no furnish presumptive evidence both of the existence of the power and of a compliance with the forms of law in the execution? We agree that the affirmative of these questions has been frequently deter mined by this court in cases involving Spanish titles in the Terr tories of Louisiana and Florida; but no such presumptions are neces sary or admissible in respect to Mexican titles granted since the ac of 18 August, 1824, and the regulation of 21 November, 1828. Au thority to make the grants is there expressly conferred on the gov ernors, as well as the terms and conditions prescribed upon whic they shall be made. The court must look to these laws for both th power to make the grant and for the mode and manner of its exer cise, and they are to be substantially complied with, except so fa as modified by the usages and customs of the government unde which the titles are derived, the principles of equity, and the deci ions of this court."

It seems to me that the law laid down by the Supreme Court the United States in the case just cited is fatal to the claim unde consideration, for the claim of Cambuston appears to have bee stronger than the one before me, because in that case the grant wa made by the governor of the Territory, who might have made legally, but failed by omitting to follow and execute a part of th prescribed regulations, while in this case the grant was made by justice of the peace who, so far as I can learn, was not empowered either by law or custom under any circumstances whatever, to mak donations of the "vacant public lands of the Republic of Mexico. It does not appear that any attempt was ever made to comply wit

any single one of the regulations of 1828 or the law of 1824 in making this grant.

There is no evidence before me that the land was occupied and possessed by any person at the date of the treaty of Guadalupe Hidalgo, 2 February, 1848, or before that date or after it until
143 1855. Lucero, a witness, swears that when he first knew Trujillo he was living at the place, which was perhaps about the year 1855; that he does not know how long he lived there, but that it was a considerable time; that Trujillo moved away from there and died at the town of San Miguel; that he, the witness, bought the land after the death of Trujillo for twelve dollars and moved upon it; lived there about five years and sold it to Taylor, who now lives upon it. This is all the evidence of occupation. It will be seen that only five years of the time is definitely accounted for between the date of the grant, in 1842, and the occupation by Taylor, in 1866, a period of twenty-four years, and the five years was long subsequent to the treaty of Guadalupe Hidalgo and the American occupation of the country. The witness Lucero swears that he first knew Trujillo in 1855; that he knew Trujillo occupied the land a considerable time, and yet the deed in evidence from Lopez, claiming to represent the widow and heirs of Trujillo, deceased, to Lucero, is dated 21 September, 1855. Lucero further swears to living on the property about five years and then selling to Taylor, and his deed to Taylor, in evidence, is dated 24 May, 1866. So, although he owned the place eleven years, there was six years of the time that he did not occupy it. The testimony of this single witness is contradictory, is opposed by the official written record, and is generally unsatisfactory and proves nothing. It does not appear that Lopez had any legal right to sell the property as representative of the widow and heirs of Trujillo, deceased, nor that Trujillo was dead at that time; but the testimony of Lucero would go to show, if it shows anything, that Trujillo was living on the land in 1855 and for a considerable time afterwards. I think that there are other defects in the chain of title from Trujillo to Taylor, and that the whole matter of deraignment of title and of possession is very badly muddled, to say the least.

I do not think that the "act of limitation" of the territorial legislature, approved February 1, 1858, has any bearing upon this title, and if it has I have no jurisdiction under it. This office only
144 has power to report to Congress, for confirmation or rejection, such original Spanish or Mexican grants of land as may be submitted to it under the eighth section of the act of Congress of 22 July, 1854, establishing this office as directed by the Commissioner of the General Land Office and following the decisions of the Supreme Court of the United States. If, in any case, I am satisfied that the grant is legal and chain of title perfect from original grantee to present claimant, I may approve the grant to the latter, but not then can my action prejudice the legal rights or equities of any unknown or adverse parties in interest. All disputes between parties claiming to hold under the original grantee or by prescription or otherwise; in fact, all matters connected with adverse inter-

ests, possession or color of title, must be adjudicated in the courts of the country. I have no jurisdiction or power over them and ordinarily in cases of valid grants can only recommend confirmation to legal representatives of original grantee. If the claimant's theory on this point is correct it would be only necessary for a party to live ten years on the public domain undisturbed to hold any boundless quantity that he might choose to claim. The absurdity of such law is apparent*ly* to the dullest comprehension, and I do not think it would hold water worth a cent. Besides, that act as recited in the petition in this case refers only to parties holding under the "Government of Spain or Mexico or the United States, or by whatsoever authority empowered by said governments to make grants to lands," and so would not apply here, as the grant in this case was not made by either of said governments or by any authority by either of them "empowered * * * to make grants to lands."

Counsel for petitioner, in support of the proposition that a justice of the peace might donate public lands under the laws of Mexico, refers me to Reynolds *vs.* West, 1 California, 322, where it was held

"that a grant of land made by a Mexican alcalde before the
145 war will be presumed to have been made in the course of his ordinary and accustomed duties and within the scope of his legitimate authority, and the burden of the proof lies on him who controverts the validity of such a grant to show that it is not made by a competent officer or in the form prescribed by law." The quotation is from 1 Cal. Digest, 570, sec. 477.

This decision is classified under the head of pueblo lands, and undoubtedly refers to such lands belonging to the municipality as the alcalde may have had the legal right in California to grant for the good of the community and by its direction. Setting aside the question of the distinction between the powers and duties of an alcalde and a justice of the peace under the Mexican laws and customs, and also the difference in local laws in the two Territories, which might be important if we only knew it, I think that as the land in controversy in that case was not, at the time of granting, "vacant public lands of the Republic of Mexico," but pueblo lands, the decision is of no possible authority in this case. I have not seen the report of the case in full; but if the alcalde made a grant of the "vacant public lands of the Republic of Mexico" after August 18, 1824, it was illegal and void, according to the decision of the Supreme Court of the United States in United States *vs.* Cambuston, 20 Howard, 59, before cited, and if made previous to that date the case is not parallel to the one before me. This is the only decision of any of the courts which has been referred to by counsel on this point.

Following the line of argument and reasoning pursued and the r-utine of the Supreme Court of the United States, as cited, and there being no evidence of such continued actual occupation as would bring this claim within the law of prescription, I conclude that the claimant Taylor has not established any legal or equitable title to the lands claimed by him or those under whom he holds, either previous to or at the date of the treaty of Guadalupe Hidalgo, Feb-

ruary 2, 1848, and that said lands belong, of right, to the public domain of the United States.

146 I therefore recommend that Congress do not confirm this grant of lands, and transmit herewith a complete transcript of the record.

JAMES K. PROUDFIT,
Surveyor General.

United States surveyor general's office, Santa Fé, New Mexico, December 19, 1872.

Endorsement: File 148. Opinion of surveyor general. Rejected Dec. 19, 1872.

This document is duly recorded on pages 119, 120, 121, 122, 123, 124, 125, and 126, in vol. 4 of Land Claim Records, in the office of surveyor general.

147 LAW OFFICE OF S. B. ELKINS,
SANTA FÉ, NEW MEXICO, *Sept. 22nd*, 1873.

To the Hon. James K. Proudfit, surveyor general of the Territory of New Mexico:

Your petitioner, John L. Taylor, would respectfully represent that since the application made to your office for the approval of a grant of land known as the Ojo del Apache grant, reported as No. 72, and which was rejected by you December 19, 1872, he has been able to discover additional evidence, material on its character, bearing upon the validity of the grant in question.

That he can establish by one Rafael Aragon, who, at the time of the date of the instrument on file in your office, and which was executed by one Damasio Salazar, was the secretary of said Salazar, that there was a *bona fide* grant from the then governor of the Territory of New Mexico, and that the instrument executed by the said Salazar was only in pursuance of said grant.

Also that Guadalupe Miranda, who was then secretary to the governor of said Territory, is now living, and that he expects to be able to establish by said Miranda the existence of a grant by the governor of the land in question to the original grantee, Ventura Trujillo, and that the same was countersigned by him as such secretary.

Your petitioner further shows that said testimony was entirely unknown to him at the date of his application, and that to deprive him of the privilege of introducing such testimony will be very injurious if not destruction of his vested rights.

Therefore he asks that he may be permitted to introduce such testimony as he has been able to obtain, and that such action be taken by you as will suspend final action on his said application until such testimony be heard, and that a day be named to take the same. All of which is respectfully submitted to your consideration.

JOHN L. TAYLOR,
By his attorneys, S. B. ELKINS AND
HENRY L. WALDO.

Endorsement: File 148. Ventura Trujillo. Petition to
148 present new testimony in the case. Filed in sur. gen.'s office this Sep. 23, 1873. Miller, C. C.

Sup-lemantary.

This document is duly recorded on pages 127 and 128, in vol. 4 of Land Claim Records, in the office of the surveyor general.

149 Retained duplicate.

UNITED STATES SURVEYOR GENERAL'S OFFICE,
SANTA FÉ, NEW MEXICO, *September* 23, 1873.

Mr. John L. Taylor.

SIR: Your petition, dated yesterday, by your attorneys, Messrs. Elkins and Waldo, in regard to the private land claim of the Ojo del Apache, is received and placed on file.

In reply I have to say that I can do nothing to suspend final action on your claim, as the record is now the property of the Congress of the United States; but will very cheerfully hear or receive any new testimony that you may have to offer at any time upon one day's notice, and will transmit the same to the Commissioner of the General Land Office, to be by him submitted to Congress in the usual form, together with any modification of my former opinion that I may deem proper and just.

I am respectfully your obedient servant,

JAMES K. PROUDFIT,
Surveyor General.

Endorsement: File 148. Ventura Trujillo. Sur. gen.'s letter of Sep. 23, '73, upon petition to present new testimony.

Supplementary.

This document is duly recorded on page 128, in vol. 4 of Land Claim Records, in the office of the surveyor general.

150 Retained duplicate.

U. S. SURVEYOR GENERAL'S OFFICE,
SANTA FÉ, N. M., *Feb.* 7, 1874.

Hon. Willis Drummond, Commissioner of the General Land Office, Washington, D. C.

SIR: I have the honor to transmit in triplicate additional testimony presented by the claimant in case of private land claim of Ojo del Apache, heretofore reported by me as No. 72, together with correspondence relating thereto.

The claimant requests that the same be laid before Congress for its consideration in connection with the record heretofore transmitted.

This new testimony goes to show that there was a grant made by Gov. Armijo to Ventura Trujillo, but is based entirely upon memory

of witnesses. For various reasons I desire to make no modification of my previous opinion, principally because I doubt my jurisdiction, the matter being now before Congress. I therefore simply submit the additional testimony, not doubting that Congress will arrive at a just conclusion upon consideration of the whole record.

I am, very respectfully, your obedient servant,

JAMES K. PROUDFIT,
U. S. Surveyor General.

Endorsement: File 148. Ventura Trujillo.

Supplementary.

Letter of transmittal, Feb. 7, 1874.
This document is duly recorded on page 136 of Land Claims Records, in office of surveyor general.

151 In the Court of Private Land Claims, Santa Fé, New Mexico, August Term, 1896.

MAY HAYS *vs.* UNITED STATES. } No. 101. Ojo del Apache Grant.

Opinion of the court by FULLER, A. J., delivered November 23, 1896:

In the case of May Hays *vs.* United States, No. 101, for the confirmation of the Ojo del Apache grant, it is alleged that in June, 1842, one Ventura Trujillo petitioned the governor for the grant of land in controversy; that the governor made the grant and ordered one Salazar, who was constitutional alcalde within the demarcation of San Miguel del Bado, to put the petitioner in the possession of the land and return the proceedings to the governor. It is alleged that that was all done, and that the petitioner was put in possession and the return made upon the order of the governor, together with the certificate that possession had been given, and that the papers were all filed in the archives, and that they had been lost or destroyed, all of them, except that one which is spoken of as the execution certificate, showing the execution of the governor's order to place the petitioner in the possession of the land; and it is asked that secondary evidence may be offered of these proceedings, and that title may be confirmed to May Hays, successor in title to Trujillo.

The plaintiff has introduced much testimony in the case for the purpose of establishing the allegations of the petition that the grant had been made by the governor and the loss of the papers.

Among other witnesses he has introduced Guadalupe Mirande, who was the secretary of the Territory of New Mexico under the Mexican regime from 1839 up to 1843, and whose testimony was taken and used before the surveyor general in the year 1873, thirty years after he went out of office. He testifies that he has recollection that the governor did make the grant and did order Salazar to put the

petitioner in possession, and that Salazar made a certificate
152 of his action in that behalf, and all the papers were returned to his office by him and filed in the archives. He also testifies from his knowledge of such matters that all this was done regularly according to the laws of the country at that time. He has no memorandum, he says, by which to refresh his recollection, but he testifies to these facts from memory alone.

There is the testimony also of Aragon, who was the secretary of the alcalde, Salazar, and he testifies that at the time Salazar executed the governor's order of possession that there was present an order from the governor directing him so to do, and that all these papers were duly returned; that is the substance of the testimony on the subject of the making of the grant by the governor.

As to the subject of the loss of the grant the evidence is inferential, from the fact that in 1873 there was some loss or destruction of the archives during the administration of an American, Governor Pyle. There is no evidence tending to show any loss or destruction, although there is an allegation to that effect, either before that time or at any other time.

If these facts stood alone and without any explanation or contradiction, possibly the court might feel constrained to confirm the grant as prayed for in the petition, but the petitioner has himself offered in evidence a paper marked Plaintiff's Exhibit "A," which he alleges is the certificate of the execution of the governor's order by the alcalde, Salazar, and it becomes our duty on the threshold of this case to place a construction upon that paper. It does not profess to be in terms anywhere throughout the paper the execution of the governor's order, but the action of the alcalde, Salazar. On the contrary, its whole frame and structure indicates that it was an independent action taken by the alcalde himself. He recites that the petitioner was there present and made his petition for the land. He goes on then and declares that he had adjudged that the petitioner had meritorious grounds for making the application. He then declares that his finding on the petition was based upon meritorious grounds, and that he had granted him by donation the lands with the boundaries petitioned for, and he declares that he did this in obedi-
ence to the supreme decrees and laws of the land. He then
153 declares further that he pointed out to the petitioner the boundaries of the grant which he made. He does not allege anywhere nor can it be inferred from what he states that he ever put the petitioner in juridical possession of the land according to the customs of the country; but, as we construe it throughout the whole document, he is acting on his own motion, and he alone made the grant. Now, against the evidence of this writing is the mere memory of the secretary of the Territory, and, as is stated before, without any note or memorandum at all, and that testimony was given thirty years after the alleged transaction, and the testimony of Aragon, in which he offers no explanation at all for the omission of the document, which it is stated he had prepared at the instance of Salazar, tending to show the execution of an order of possession, simply saying that the same was omitted by mistake;

to such recollections as these the court is unable to give the construction asked for by the petitioner upon the above-named document which he presented. The court therefore is constrained to believe that the possession of this land was held and the application for this land was made under and solely by virtue of an alcalde grant. The court is therefore constrained to reject the claim, as the alcalde had no authority to make a grant. The claim of the petitioner is therefore rejected.

Justices Stone and Sluss dissent.

THOMAS C. FULLER,
Associate Justice.

154 And afterwards, to wit, on the 12th day of said term, the same being November 23d, 1896, the following, among other, proceedings were had, to wit:

In the Court of Private Land Claims.

MAY HAYS
vs.
UNITED STATES. } No. 101. Ojo del Apache Grant.

This cause having been tried and submitted and taken under advisement by the court upon full legal proof and hearing at a former day of the present term, *and* the court, being now sufficiently advised in the premises doth find that the allegations of said petition for the confirmation of the private land claim commonly known as the Ojo del Apache grant, and being No. 72 as reported by the surveyor general to Congress, situate in the county of San Miguel, Territory of New Mexico, has not been sustained by satisfactory proof, and that the title so asserted to the said tract of land claimed to have been granted by Manuel Armijo, governor of the Territory of New Mexico, previous to the second day of July, A. D. 1842, to one Ventura Trujillo, and juridical possession of which is
155 alleged to have been given to said Ventura Trujillo on July 2, 1842, by Damasio Salazar, a justice of the peace in the second demarcation of San Miguel del Bado, is of no validity, and that said grant or concession to said tract of land, more particularly described as follows, on the north the mesa, on the south the old road to Las Chupainas, on the east the Mesa de Los Chupainas, and on the west the hill bordering on the Cañoncito de la Lagunita, is not such an one as the United States are bound to recognize and confirm by virtue of the colonization law of August 18, 1824, the colonization regulations of November 21, 1828, the laws and ordinances of Spain or Mexico, the laws of nations, or the treaties of cession of Mexico to the United States.

It is therefore ordered, adjudged, and decreed that the claim to the said described tract of land under said grant and possession alleged to have been made and confirmed as aforesaid be, and the same is hereby, rejected, and said petition is dismissed.

156 In the United States Court of Private Land Claims.

MAY HAYS, Plaintiffs and Appellants,
vs.
THE UNITED STATES OF AMERICA, Defendant and Appellee.
} No. 101. "Ojo del Apache."

The above-named plaintiff and appellant, May Hays, considering himself aggrieved by the decree entered on the 23rd day of November, 1896, in the above-entitled proceeding, does hereby appeal from said decree to the Supreme Court of the United States and pray that this appeal be allowed, and that a transcript of the record and proceedings and papers upon which said decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

(Signed) CATRON, SPIESS & GORTNER,
Attorneys for Plaintiff and Appellant.

And now, to wit, on the 21st day of May, A. D. 1897, it appearing to the satisfaction of the court that the said appeal should be allowed, it is ordered that an appeal be, and hereby is, now allowed as prayed for.

(Signed) JOSEPH R. REED,
Chief Justice.

157 And be it further remembered that thereafter, to wit, on 30th day of June, 1897, a stipulation was filed in the office of the clerk; which said stipulation is in the words and figures following, to wit:

158 In the United States Court of Private Land Claims, Sitting at Santa Fé, in the Territory of New Mexico.

MAY HAYS, Plaintiff,
versus
UNITED STATES ET AL.
} No. 101. "Ojo del Apache" Grant.

Stipulation as to Certain Deeds and Exhibits Showing the Chain of Title in the Above-entitled Cause.

It is hereby stipulated and agreed that the following deeds and exhibits introduced on the trial of said cause shall be omitted from the record sent up on appeal, it being admitted by the Government that the plaintiff, May Hays, has succeeded at least in part to the interest, if any, which the said Benturo Trujillo had in the tract herein sued for, to wit:

Exhibit 3, deed from Andrea Trujillo and Juan Catarino Romero, her husband; Francisco Trujillo and Jacinta Vigil, his wife; Maria Apolinaria Romero, Maria Sefarina Garcia, wife of Donaciano Trujillo; Isidro Lopez and Tomasa Tabares, his wife; Juan Lopez and Gregoria Romero, his wife, and Donaciano Trujillo, husband

of Seferina Garcia, to Louis Sulzbacher, conveying half their interest in the said tract acquired by virtue of inheritance as the direct or indirect heirs of Bentura Trujillo, deceased, and Maria Gertrudes Gonzales, deceased, wife of said Trujillo.

Exhibit 4, deed from Lazaro Sandoval and Margarita Baca, his wife, and Guadalupe Trujillo and Francisca Lopez to Louis Sulzbacher, conveying all their interest in the tract acquired by virtue of inheritance as the direct or indirect heirs of the original grantee.

Exhibit 5, deed from Juan Catarino Romero and Antonia Trujillo, his wife, and Francisco Trujillo and Jacinta Vigil, his wife, to Louis Sulzbacher, conveying all their interest in the tract acquired by inheritance, etc., as above.

Exhibit 6, deed from Donaciano Trujillo and Serafina Garcia, his wife, and Apolinaria Romero to Louis Sulzbacher, conveying all their interest in the tract acquired, as above.

Exhibit 7, deed from Guadalupe Trujillo to Louis Sulzbacher, conveying all his interest in the tract aforesaid.

159 Exhibit 8, deed from Lazaro Sandoval and Margarita Baca his wife, to Louis Sulzbacher, conveying all their interest in the tract, as aforesaid.

Exhibit 9, deed from Isidro Lopez and Tomasa Tabares, his wife, to Jose Lino Rivera, conveying one undivided ninth part of the tract acquired, as aforesaid.

Exhibit 10, deed from Jose L. Rivera and Rita Lopez de Rivera, his wife, to May Hays, conveying the interest in the last-aforementioned deed.

Exhibit 11, deed from John L. Taylor, administrator of the estate of Henry D. Gorman, to May Hays, being sale by order of the probate court and conveying one undivided half of the tract.

Exhibit 12, deed from Louis Sulzbacher and Pauline, his wife, to May Hays, conveying all their interest in the tract.

Exhibit 13, deed from John L. Taylor and Mary E., his wife, to May Hays, conveying all their interest in the tract.

CATRON, SPIESS & GORTNER,
Attorneys for Plaintiff.
MATT. G. REYNOLDS,
United States Attorney.

June 29th, 1897.

160 UNITED STATES OF AMERICA, }
Territory of New Mexico. }

I, James H. Reeder, clerk of the court of private land claims, do hereby certify that the foregoing 159 pages contain a full, true, and perfect transcript of all the papers, pleadings, record entries of proceedings, and evidence in the cause lately pending in said court, wherein May Hays was petitioner and The United States were defendants, except certain original exhibits named in a stipulation of said parties, filed in my office on the 30th day of June, 1897, which is included in this transcript, and I further certify that this tran-

script constitute a full, true, and perfect record of the said cause, as shown by the records and files of my office.

Witness my hand and the seal of said court, at Santa Fé, New Mexico, this 30th day of June, A. D. 1897.

[Seal Court of Private Land Claims, Santa Fé, New Mexico.]

JAMES H. REEDER,
Clerk C. P. L. C.,
By IRENEO L. CHAVES,
Deputy Clerk C. P. L. C.

Endorsed on cover: Case No. 16,656. Court of private land claims. Term No., 155. May Hays, appellant, *vs.* The United States. Filed August 23d, 1897.